

<p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION</p> <p>4 DAVID DAVIES d/b/a DAVIES) 5 HOME SERVICES, individually) 6 and as the representative) 7 of a class of similarly) 8 situated persons,) 9 Plaintiff,) No. 13-CV-3546 10 vs.) 11 W.W. GRAINGER, INC., and) 12 JOHN DOES 1-12,) 13 Defendants.)</p> <p>14 The deposition of ROBERT J. FINN taken 15 before Teresa Resendez, Certified Shorthand Reporter, 16 taken pursuant to the provisions of the Illinois Code 17 of Civil Procedure and the Rules of the Supreme Court 18 thereof pertaining to the taking of depositions for the 19 purpose of discovery at 134 North LaSalle Street, 20 Suite 1000, Chicago, Illinois, commencing at 21 10:00 a.m., on October 15, 2013.</p>	<p>3</p> <p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 ROBERT J. FINN</p> <p>4 Examination by Mr. Smith 4</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 FINN DEPOSITION EXHIBIT</p> <p>8 No. 1 21</p> <p>9 No. 2 28</p> <p>10 No. 3 64</p> <p>11 No. 4 70</p> <p>12 No. 5 71</p>
<p>2</p> <p>1 APPEARANCES:</p> <p>2 BOCK & HATCH, LLC</p> <p>3 MR. JAMES M. SMITH</p> <p>4 MR. JONATHAN B. PIPER</p> <p>5 134 North LaSalle Street</p> <p>6 Suite 1000</p> <p>7 Chicago, Illinois 60602</p> <p>8 Phone: (312) 658-5500</p> <p>9 E-mail: jon@bockhatchllc.com</p> <p>10 On behalf of the Plaintiff;</p> <p>11 WINSTON & STRAWN, LLP</p> <p>12 MR. NORMAN K. BECK</p> <p>13 35 West Wacker Drive</p> <p>14 Chicago, Illinois 60601</p> <p>15 Phone: (312) 558-7422</p> <p>16 E-mail: nbeck@winston.com</p> <p>17 On behalf of the Defendants;</p> <p>18 W.W. GRAINGER, INC.</p> <p>19 MS. AIMEE M. NOLAN</p> <p>20 100 Grainger Parkway</p> <p>21 Lake Forest, Illinois 60045</p> <p>22 Phone: (847) 535-1047</p> <p>23 E-mail: aimee.nolan@grainger.com</p> <p>24 On behalf of the Defendant</p> <p>W.W. Grainger, Inc.</p> <p>* * * * *</p>	<p>4</p> <p>1 WHEREUPON:</p> <p>2 ROBERT J. FINN,</p> <p>3 called as a witness herein, having been first duly</p> <p>4 sworn, was examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. SMITH:</p> <p>7 Q. Good morning, sir. Can you please state your</p> <p>8 full name for the record.</p> <p>9 A. Robert J. Finn.</p> <p>10 Q. And spell your last name, please.</p> <p>11 A. F, like in Frank, I-N-N.</p> <p>12 Q. Okay. And my name is Jim Smith. I'm one of</p> <p>13 the plaintiff's attorneys who represents David Davies,</p> <p>14 doing business as, Davies Home Services. And we're</p> <p>15 here today to take your deposition. Have you ever</p> <p>16 given a deposition before?</p> <p>17 A. No.</p> <p>18 Q. Okay. As you can see -- And I'm sure you had</p> <p>19 discussions with your counsel about how this day was</p> <p>20 going to go -- or morning, hopefully. But as you can</p> <p>21 see, there's a court reporter here. She's going to</p> <p>22 take down everything that we say. So it's important</p> <p>23 that, when we leave here today, the court reporter has</p> <p>24 the opportunity to transcribe a clear record. So to</p>

<p>5</p> <p>1 that end, I'm going to do my best not to talk over you</p> <p>2 and interrupt you when you're answering a question, and</p> <p>3 I'm going ask that you do the same for me when I'm</p> <p>4 asking a question. Does that make sense?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And to the extent this is different</p> <p>7 than having just a normal conversation, oftentimes, I</p> <p>8 can nod my head or say, you know, words like "uh-huh"</p> <p>9 or "mm-hmm," and we understand what's going on; but the</p> <p>10 court reporter might not be able to take that down. So</p> <p>11 to the extent that you can give "yes" or "no" answers</p> <p>12 or something clear that the court reporter can</p> <p>13 understand, that's important. Do you understand that?</p> <p>14 A. Yes.</p> <p>15 Q. Another point of clarification is, if I ask a</p> <p>16 question and you don't quite understand it, please ask</p> <p>17 me for clarification. Okay?</p> <p>18 A. Okay.</p> <p>19 Q. And that's important because if I think I'm</p> <p>20 asking a clear question and you don't understand it,</p> <p>21 but you answer it anyway, it's going to be</p> <p>22 understood -- or assumed that you did understand it.</p> <p>23 Does that make sense to you?</p> <p>24 A. Yes.</p>	<p>7</p> <p>1 prepare for today's deposition?</p> <p>2 A. Do you want specific names?</p> <p>3 Q. Yes, please.</p> <p>4 A. Kathy Kasok.</p> <p>5 Q. Is that with a K or a C?</p> <p>6 A. K.</p> <p>7 Q. And do you know how to spell her last name?</p> <p>8 A. K-A-S-O-K, I believe, maybe A-K.</p> <p>9 Q. Okay. Anybody else?</p> <p>10 A. Tom Carlson.</p> <p>11 Q. Do you know how to spell Carlson?</p> <p>12 A. C-A-R-L-S-O-N.</p> <p>13 Q. Anybody else?</p> <p>14 A. Brett Macalpine.</p> <p>15 Q. Do you know how to spell his last name?</p> <p>16 A. Yeah. M-A-C-A-L-P-I-N-E.</p> <p>17 Q. Anybody else?</p> <p>18 A. Patti Lang, P-A-T-T-I, L-A-N-G; Amy Woolerly,</p> <p>19 W-O-O-L-E-R-Y; Dan Nicholas, N-I-C-O-L-A-S. Peggy in</p> <p>20 Pricing, I don't know her last name.</p> <p>21 Q. Is that it?</p> <p>22 A. That's as far as I ...</p> <p>23 Q. Did you do anything else to prepare for</p> <p>24 today's deposition?</p>
<p>6</p> <p>1 Q. Okay. If you want to go back at any time</p> <p>2 during the deposition to clarify an answer you gave, we</p> <p>3 can stop and go back and revisit that. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. Are you on any medications today that would</p> <p>6 affect your ability to answer or understand my</p> <p>7 questions?</p> <p>8 A. No.</p> <p>9 Q. Do you have any impairments or disability</p> <p>10 that would affect your ability to answer or understand</p> <p>11 my questions?</p> <p>12 A. No.</p> <p>13 Q. Did you do anything to prepare for this</p> <p>14 deposition?</p> <p>15 A. Yes.</p> <p>16 Q. And what did you do?</p> <p>17 A. I talked to our attorneys.</p> <p>18 Q. Anything else?</p> <p>19 A. And I talked to people within Grainger who</p> <p>20 were familiar with the project.</p> <p>21 Q. And when you say "project," what do you mean</p> <p>22 by that?</p> <p>23 A. The fax campaign.</p> <p>24 Q. And who at Grainger did you speak with to</p>	<p>8</p> <p>1 A. I reviewed the fax campaign myself.</p> <p>2 Q. When you say the "fax campaign" -- Strike</p> <p>3 that.</p> <p>4 When you say "reviewed the fax campaign," is</p> <p>5 that documents that you were reviewing?</p> <p>6 A. Yes.</p> <p>7 Q. And what type of documents would that be?</p> <p>8 A. That's the fax that we sent.</p> <p>9 Q. Anything beyond the fax?</p> <p>10 A. Yes.</p> <p>11 Q. And what types of documents would those be?</p> <p>12 A. Contracts.</p> <p>13 Q. Anything else?</p> <p>14 A. That's pretty much it. That's pretty much</p> <p>15 it.</p> <p>16 Q. And who would those contracts be with?</p> <p>17 A. InfoUSA.</p> <p>18 Q. Anybody else other than InfoUSA?</p> <p>19 A. Optima Direct.</p> <p>20 Q. Is it O-P-T-I-M-A, Optima --</p> <p>21 A. Yes.</p> <p>22 Q. -- and then a new word, "direct"?</p> <p>23 A. Yes.</p> <p>24 Q. Any other contracts?</p>

<p>9</p> <p>1 MR. SMITH: Off the record.</p> <p>2 (Enter Mr. Piper.)</p> <p>3 (Discussion off the record.)</p> <p>4 BY MR. SMITH:</p> <p>5 Q. Any contracts that you reviewed other than</p> <p>6 with InfoUSA and Optima Direct?</p> <p>7 A. No.</p> <p>8 Q. Okay. I'll circle back and talk a little bit</p> <p>9 about the folks who you spoke with to prepare for the</p> <p>10 deposition.</p> <p>11 For now, I'm going to talk a little bit about</p> <p>12 what you do for Grainger and a little bit about what</p> <p>13 Grainger does. Okay?</p> <p>14 A. Okay.</p> <p>15 Q. And I know that the formal name of Grainger</p> <p>16 is W.W. Grainger, Inc.; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Is it okay for the purpose of this deposition</p> <p>19 that we just refer to that entity as Grainger, and</p> <p>20 everybody will know what I'm talking about -- or what</p> <p>21 we're talking about?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And you work for Grainger; is that</p> <p>24 right?</p>	<p>11</p> <p>1 BY THE WITNESS:</p> <p>2 A. We have 1.8 million customers.</p> <p>3 Q. And is that nationwide or worldwide, that</p> <p>4 figure?</p> <p>5 A. I believe it's nationwide.</p> <p>6 Q. And how long have you been the senior</p> <p>7 director of marketing communications?</p> <p>8 A. About seven years.</p> <p>9 Q. And what were you -- or did you have a title</p> <p>10 before that?</p> <p>11 A. Yes.</p> <p>12 Q. And what was it?</p> <p>13 A. Director of direct marketing.</p> <p>14 Q. And how long were you the director of direct</p> <p>15 marketing for Grainger?</p> <p>16 A. About two years.</p> <p>17 Q. Does that bring you to when you started with</p> <p>18 Grainger?</p> <p>19 A. Yeah.</p> <p>20 Q. And what were your job responsibilities while</p> <p>21 you were the director of direct marketing?</p> <p>22 A. To create direct mail.</p> <p>23 Q. Anything else?</p> <p>24 A. No.</p>
<p>10</p> <p>1 A. Yes.</p> <p>2 Q. And how long have you worked for Grainger?</p> <p>3 A. Almost nine years.</p> <p>4 Q. And what's your current title?</p> <p>5 A. Senior director of marketing communications.</p> <p>6 Q. Okay. And what is Grainger?</p> <p>7 A. Grainger is an industrial distribution</p> <p>8 company that sells millions of products to all</p> <p>9 different types of businesses.</p> <p>10 Q. Are they limited to the United States, or do</p> <p>11 they sell nationwide -- or worldwide?</p> <p>12 A. Yeah. We have locations -- We sell</p> <p>13 worldwide.</p> <p>14 Q. And within the nation, is it all 50 states?</p> <p>15 A. Yes.</p> <p>16 Q. And as I understand correctly, Grainger is a</p> <p>17 Fortune 500 company; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And if you had to estimate -- or could you</p> <p>20 estimate, I should say, how many customers that</p> <p>21 Grainger has nationwide?</p> <p>22 MR. BECK: This is just a little bit off the</p> <p>23 notice, but go ahead. If you have an answer, you can</p> <p>24 answer that.</p>	<p>12</p> <p>1 Q. And can you further elaborate what you mean</p> <p>2 by "create direct mail"?</p> <p>3 A. Yes. To put graphics and copy on direct mail</p> <p>4 and to execute it and send out to our customers.</p> <p>5 Q. And when you say your customers, were they</p> <p>6 existing customers at the time?</p> <p>7 A. Back in --</p> <p>8 Q. In the two-year time period when you were</p> <p>9 director of direct marketing.</p> <p>10 A. Yes.</p> <p>11 Q. So did you have a customer list?</p> <p>12 A. Yes.</p> <p>13 Q. And you would -- Walk me through that</p> <p>14 process. How would you actually send out the direct</p> <p>15 mail marketing?</p> <p>16 A. We have a customer list on our database, and</p> <p>17 we would target those customers, specific customers,</p> <p>18 and send direct mail out to that database of existing</p> <p>19 customers.</p> <p>20 Q. And what's the name of that database that</p> <p>21 you're referring to?</p> <p>22 A. Are you referring -- Are you referring back</p> <p>23 to the 2004?</p> <p>24 Q. Well, you referred to a database that</p>

<p style="text-align: right;">13</p> <p>1 Grainger had.</p> <p>2 A. Yeah, our ERP system.</p> <p>3 Q. ERP?</p> <p>4 A. Yeah. SAP.</p> <p>5 Q. Do you know what those two acronyms mean, ERP</p> <p>6 and SAP?</p> <p>7 A. Yes.</p> <p>8 Q. What do they mean?</p> <p>9 A. ERP is a common term, Enterprise --</p> <p>10 something -- platform. I don't remember what the R</p> <p>11 means.</p> <p>12 Q. Okay.</p> <p>13 A. SAP is a company. SAP -- Currently we have</p> <p>14 SAP as our ERP system.</p> <p>15 Q. And that -- Currently, today, Grainger has</p> <p>16 that same company, SAP?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And how would Grainger input the --</p> <p>19 Strike that.</p> <p>20 Was this database limited to existing</p> <p>21 customers only?</p> <p>22 A. Back then, I don't remember.</p> <p>23 Q. Okay. Has it changed today, the database,</p> <p>24 with respect to being limited to customers or including</p>	<p style="text-align: right;">15</p> <p>1 A. We have sellers in -- calling on customers,</p> <p>2 and they have one-pager sheets that talk about products</p> <p>3 or services that Grainger offers in which the seller</p> <p>4 can talk to the customer.</p> <p>5 Q. So -- And I might not be understanding you</p> <p>6 correctly. Does Grainger have, like, a phone center</p> <p>7 where you're calling -- where their job description is</p> <p>8 to, like, telemarket or call on existing customers?</p> <p>9 A. We have a call center. Customers can call</p> <p>10 into the call center to place orders and whatnot. We</p> <p>11 have call center folks that call our existing customers</p> <p>12 from time to time.</p> <p>13 Q. And with respect to executing these forms of</p> <p>14 advertising that you just listed, what is your role?</p> <p>15 A. I'm sorry. Could you repeat the question?</p> <p>16 Q. Sure. As the senior director of marketing</p> <p>17 communications over the last nine years, you had</p> <p>18 testified that it was -- you were to execute</p> <p>19 advertising for Grainger?</p> <p>20 A. Mm-hmm.</p> <p>21 Q. My question is, what was your specific role</p> <p>22 in executing these forms of advertisement?</p> <p>23 A. Oversee teams that create the advertising,</p> <p>24 work with our business partners to understand what</p>
<p style="text-align: right;">14</p> <p>1 folks in there that aren't customers?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. So when you changed your position to</p> <p>4 senior director of marketing communications, what were</p> <p>5 your job responsibilities? Or how did your job</p> <p>6 responsibilities change?</p> <p>7 A. It broadened the scope from -- In addition to</p> <p>8 direct mail, I'm responsible for executing -- my team</p> <p>9 is responsible for executing the advertising for</p> <p>10 Grainger.</p> <p>11 Q. Is that limited by geography in any way?</p> <p>12 A. Predominantly, the United States.</p> <p>13 Q. And when you say "executing the advertising,"</p> <p>14 is that all forms of advertising for Grainger?</p> <p>15 A. Yes.</p> <p>16 Q. And would it be possible for you to list the</p> <p>17 various forms of advertising that Grainger has done</p> <p>18 over the last five years?</p> <p>19 A. Sure. Direct mail, catalogs, radio and print</p> <p>20 advertising, seller collateral, digital media, trade</p> <p>21 show banners, and fax.</p> <p>22 Q. Anything else?</p> <p>23 A. That's it.</p> <p>24 Q. What does seller collateral mean?</p>	<p style="text-align: right;">16</p> <p>1 their goals are, and then create the advertising that</p> <p>2 meets those goals.</p> <p>3 Q. Okay. And was there a team that you oversaw</p> <p>4 with respect to the fax advertising?</p> <p>5 A. The team that I oversaw had to do with</p> <p>6 creating the fax itself.</p> <p>7 Q. Anything else?</p> <p>8 A. No.</p> <p>9 Q. And how many members of the team in -- We'll</p> <p>10 start with today. Is there still a team today for</p> <p>11 Grainger that handles fax advertising?</p> <p>12 A. No.</p> <p>13 Q. Okay. When did that team to cease to exist</p> <p>14 or cease to handle fax advertising?</p> <p>15 A. We stopped doing fax advertising in 2009.</p> <p>16 Q. And when did you start?</p> <p>17 A. December 2008.</p> <p>18 Q. So during the time period from December 2008</p> <p>19 to 2009, are you able to list the various team members</p> <p>20 that were on that team, the fax advertising team?</p> <p>21 A. Yes.</p> <p>22 Q. Can you do that for me?</p> <p>23 A. Sure. On my team, it was really Brenda</p> <p>24 Gelfond. She created the fax.</p>

<p style="text-align: right;">17</p> <p>1 Q. She created the fax?</p> <p>2 A. Yes.</p> <p>3 Q. And can you spell her last name? Gelfond?</p> <p>4 A. G-E-L-F-O-N-D.</p> <p>5 So she was on my team and created the fax.</p> <p>6 Q. Anybody else on the team?</p> <p>7 A. There were other people on other teams.</p> <p>8 Q. I see.</p> <p>9 There were multiple facets of the fax</p> <p>10 advertising -- Were there multiple teams, I guess?</p> <p>11 A. Yes.</p> <p>12 Q. Limited to fax advertising?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. How many other teams were there?</p> <p>15 A. One other team.</p> <p>16 Q. And who oversaw that team?</p> <p>17 A. I don't know who oversaw it. I don't know</p> <p>18 who really oversaw that.</p> <p>19 Q. Okay. Does that team -- Did the two teams</p> <p>20 have names? Did you refer to them in any way?</p> <p>21 A. Yes.</p> <p>22 Q. And what were their names?</p> <p>23 A. Small business team.</p> <p>24 Q. And what was the name of the other team?</p>	<p style="text-align: right;">19</p> <p>1 Q. And you spoke with Tom Carlson to prepare for</p> <p>2 today's dep?</p> <p>3 A. Yeah, yes.</p> <p>4 Q. Anybody else you can think of?</p> <p>5 A. It's such a long time ago. I think that</p> <p>6 those are, as far as I know, the main players in the</p> <p>7 small business --</p> <p>8 Q. Okay.</p> <p>9 A. -- who helped construct the small business --</p> <p>10 part of the small business team.</p> <p>11 Q. Okay. And the small business team, just</p> <p>12 judging by what you're calling it, they did more than</p> <p>13 just fax advertising, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And so during this December 2008 to 2009 time</p> <p>16 period, was one of the things they decided to do was to</p> <p>17 market small businesses through fax advertising?</p> <p>18 A. Yes.</p> <p>19 Q. And your team, with the help of Brenda</p> <p>20 Gelfond, helped create the fax advertising?</p> <p>21 A. Yes.</p> <p>22 Q. Did you do anything else with respect to the</p> <p>23 fax advertising during that December 2008 to 2009 time</p> <p>24 frame?</p>
<p style="text-align: right;">18</p> <p>1 A. The other team was my team that created</p> <p>2 the -- So Brenda created the fax for the small business</p> <p>3 team.</p> <p>4 Q. Okay. And you're not sure who oversaw the</p> <p>5 small business team between the 2008 and 2009 time</p> <p>6 frame?</p> <p>7 A. I can give you the name -- I can give you</p> <p>8 names. I don't remember exactly who oversaw exactly at</p> <p>9 what point in time.</p> <p>10 Q. Okay. And if you could, between the</p> <p>11 December 2008 to 2009 time frame, who was on the small</p> <p>12 business team?</p> <p>13 A. John Gartner; Rohan -- R O H A N --</p> <p>14 Thromballi. Do you want me to spell it?</p> <p>15 Q. Yeah.</p> <p>16 A. I might be messing up the pronunciation, but</p> <p>17 T-H-R-O-M-B-A-L-L-I.</p> <p>18 Dan Nicholas.</p> <p>19 Q. That same --</p> <p>20 A. Yes.</p> <p>21 Q. One of the people you spoke with to prepare</p> <p>22 for today's deposition?</p> <p>23 A. Yes.</p> <p>24 Laura Weiss and Tom Carlson, I believe.</p>	<p style="text-align: right;">20</p> <p>1 A. There may have been direct mail. That's what</p> <p>2 I remember.</p> <p>3 Q. But just limited to the fax advertising, did</p> <p>4 you have any other -- did you or Brenda Gelfond have</p> <p>5 any other role in the fax advertising from December</p> <p>6 2008 to 2009?</p> <p>7 A. No.</p> <p>8 Q. Okay. And does John Gartner still work for</p> <p>9 Grainger?</p> <p>10 A. No.</p> <p>11 Q. What about Rohan?</p> <p>12 A. No.</p> <p>13 Q. Dan Nichols?</p> <p>14 A. Nicholas? Yes.</p> <p>15 Q. Nicholas.</p> <p>16 Laura Weiss?</p> <p>17 A. No.</p> <p>18 Q. And Tom Carlson?</p> <p>19 A. No.</p> <p>20 MR. BECK: Could you read that last question back?</p> <p>21 I'm sorry.</p> <p>22 (Record read as requested.)</p> <p>23 BY MR. SMITH:</p> <p>24 Q. Does Tom Carlson still work for Grainger?</p>

<p>21</p> <p>1 A. Yes.</p> <p>2 Q. The folks who you identified as people you</p> <p>3 spoke to that work for Grainger for you to prepare for</p> <p>4 today's deposition, do all those folks still work for</p> <p>5 Grainger?</p> <p>6 A. Yes.</p> <p>7 Q. Did you speak with any former employees to</p> <p>8 prepare for today's deposition?</p> <p>9 A. No.</p> <p>10 MR. SMITH: Okay. I would like to mark the first</p> <p>11 exhibit.</p> <p>12 (Finn Deposition Exhibit No. 1</p> <p>13 marked as requested.)</p> <p>14 BY MR. SMITH:</p> <p>15 Q. Sir, I'm going to hand to you what's been</p> <p>16 marked as Finn No. 1. Take some time and look that</p> <p>17 over for me. Do you recognize what's been marked as</p> <p>18 Exhibit No. 1?</p> <p>19 A. Yes.</p> <p>20 Q. And what do you recognize it to be, or what</p> <p>21 is it?</p> <p>22 A. It's a notice of deposition that -- It's the</p> <p>23 notice of deposition.</p> <p>24 Q. For you to appear here today or somebody from</p>	<p>23</p> <p>1 before December 2nd, 2009." Are you knowledgeable of</p> <p>2 this topic?</p> <p>3 A. Yes.</p> <p>4 Q. Are you the most knowledgeable person at</p> <p>5 Grainger regarding this topic?</p> <p>6 A. Yes.</p> <p>7 Q. Are there any former employees at Grainger</p> <p>8 who would be more knowledgeable than you regarding this</p> <p>9 topic?</p> <p>10 MR. BECK: Objection: form, calls for</p> <p>11 speculation.</p> <p>12 You can answer.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Could be. I don't know. I think I am,</p> <p>15 though. Could be.</p> <p>16 Q. And when you say "could be," are you thinking</p> <p>17 of any particular person or persons in mind?</p> <p>18 A. Yes.</p> <p>19 Q. And who is that?</p> <p>20 A. John Gartner.</p> <p>21 Q. Thinking about anybody else?</p> <p>22 A. Rohan Thromballi.</p> <p>23 Q. Anybody else?</p> <p>24 A. No.</p>
<p>22</p> <p>1 Grainger to appear here today?</p> <p>2 A. Yes.</p> <p>3 Q. I would like to call your attention to the</p> <p>4 second page. It starts with "Deposition Rider." Are</p> <p>5 you Grainger's designated representative to discuss</p> <p>6 these topics today?</p> <p>7 MR. BECK: Just for the record, he is, subject to</p> <p>8 discussions that you and I have had about the scope of</p> <p>9 the notice with respect to the judge's order. But</p> <p>10 subject to that ...</p> <p>11 MR. SMITH: Okay. So -- I don't know if we have</p> <p>12 to get involved on the record here, but our</p> <p>13 conversation sort of stopped once Judge Mason clarified</p> <p>14 the scope. So I guess we can, if necessary, tackle it</p> <p>15 if I go beyond the scope. If you think I do, we can,</p> <p>16 you know, cross that bridge if we get there.</p> <p>17 MR. BECK: Fair enough.</p> <p>18 BY MR. SMITH:</p> <p>19 Q. Okay. Sir, I would like to walk through this</p> <p>20 deposition rider with you. Hopefully it's not too</p> <p>21 painful.</p> <p>22 Paragraph No. 1 states, "Circumstances</p> <p>23 surrounding how Grainger obtained David Davies doing</p> <p>24 business as, Davies Home Services' fax number on or</p>	<p>24</p> <p>1 Q. Now, number 2, for the record, reads,</p> <p>2 "Circumstances surrounding how Grainger developed a</p> <p>3 list of recipients who were to receive the" -- in</p> <p>4 quotes -- "advertising circulars" -- end quotes -- "as</p> <p>5 referenced by Grainger in its initial disclosures</p> <p>6 pursuant Rule 26(a)(1) via facsimile from April 5,</p> <p>7 2009, to the current date."</p> <p>8 Are you the most knowledgeable person at</p> <p>9 Grainger regarding this topic?</p> <p>10 MR. BECK: For the record, that was one topic that</p> <p>11 we identified a being beyond the scope of the judge's</p> <p>12 order. And so Mr. Finn is not being presented here on</p> <p>13 that topic.</p> <p>14 BY MR. SMITH:</p> <p>15 Q. I'll move to the third paragraph, sir. And</p> <p>16 for the record, it reads, "Circumstances surrounding</p> <p>17 how Grainger sent or attempted to send the fax attached</p> <p>18 to plaintiff's complaint to plaintiff and any other</p> <p>19 recipients."</p> <p>20 Are you the most knowledgeable person at</p> <p>21 Grainger regarding this topic?</p> <p>22 MR. BECK: Again, that is a topic that we</p> <p>23 identified as being beyond the scope of the current</p> <p>24 order. Mr. Finn is not being presented in that</p>

<p style="text-align: right;">25</p> <p>1 capacity. Although he may have knowledge as to that 2 topic, he's not being presented as a 30(b)(6) witness 3 on that.</p> <p>4 MR. SMITH: So for any questions that I ask that 5 you deem to fall within these categories, are you going 6 to prevent Mr. Finn from answering?</p> <p>7 MR. BECK: I don't know. I don't anticipate doing 8 that, but it will depend on the question.</p> <p>9 MR. SMITH: I guess to make these a little easier 10 or smoother, what other categories or paragraphs are 11 you objecting to?</p> <p>12 MR. BECK: Two, 3, and 4, to the extent they don't 13 involve Mr. Davies; 5 and 6, to the extent -- We're not 14 objecting to 5 and 6.</p> <p>15 MR. SMITH: You're not?</p> <p>16 MR. BECK: Subject to the judge's -- I mean, the 17 judge's order specifically addressed your ability to 18 ask as to other ...</p> <p>19 BY MR. SMITH:</p> <p>20 Q. Well, maybe this is a more appropriate way to 21 do it: Mr. Finn, are you prepared to testify with 22 respect to topics discussed in Paragraph No. 2?</p> <p>23 A. No.</p> <p>24 Q. And why not?</p>	<p style="text-align: right;">27</p> <p>1 talk about these topics. Are you the person that's 2 going to talk about the topics in Paragraph No. 2?</p> <p>3 A. I don't know.</p> <p>4 Q. Is there anybody at Grainger more 5 knowledgeable than you regarding the topics contained 6 in paragraph 2?</p> <p>7 MR. BECK: Object to the form, calls for 8 speculation.</p> <p>9 You can answer.</p> <p>10 BY THE WITNESS:</p> <p>11 A. At this point, I think I probably know a lot 12 about this. So am I the absolute correct person? I'm 13 not sure.</p> <p>14 Q. Same thing with respect to paragraph 3: If 15 we've got to come back here and depose somebody 16 regarding this topic, are you the most knowledgeable 17 person at Grainger to discuss topics contained in 18 paragraph 3?</p> <p>19 MR. BECK: Same objection.</p> <p>20 You can answer.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Yeah.</p> <p>23 Q. And what about paragraph 4? If we have to 24 come back and depose somebody with respect to these</p>
<p style="text-align: right;">26</p> <p>1 A. Because I believe I was here to talk about 2 paragraphs 1, 5, and 6.</p> <p>3 Q. And what's your belief based on?</p> <p>4 A. My conversations with the attorneys.</p> <p>5 Q. Now, with respect to Paragraph No. 5, are you 6 the most knowledgeable person at Grainger regarding 7 this topic?</p> <p>8 A. Yes.</p> <p>9 Q. Are there any former Grainger employees who 10 are as knowledgeable or more knowledgeable than you on 11 this topic?</p> <p>12 A. No.</p> <p>13 Q. With respect to Paragraph No. 6, are you the 14 most knowledgeable person at Grainger on this topic?</p> <p>15 A. Yes.</p> <p>16 Q. And are there any former Grainger employees 17 who are as knowledgeable or more knowledgeable than you 18 on this topic?</p> <p>19 A. No.</p> <p>20 Q. Now, I understand that you're not prepared to 21 discuss today the topics in paragraphs 2, 3, 4, 7, and 22 8, but I want to call your attention to paragraph 2 in 23 the event that the Court straightens out the scope 24 issue and somebody's going to have to come back and</p>	<p style="text-align: right;">28</p> <p>1 topics, are you the most knowledgeable person?</p> <p>2 MR. BECK: Same objection.</p> <p>3 You can answer.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Yes.</p> <p>6 Q. I'm calling your attention down to 7 Paragraph No. 7. If we have to come back here and 8 depose somebody -- Or when we have to come back here 9 and depose somebody regarding this topic, are you going 10 to be the most knowledgeable person at Grainger?</p> <p>11 MR. BECK: Same objection.</p> <p>12 You can answer.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Yes.</p> <p>15 Q. And same question with respect to 16 Topic No. 8: If we have to come back here or when we 17 come back here, will you be the person at Grainger most 18 knowledgeable of this topic?</p> <p>19 MR. BECK: Same objection.</p> <p>20 You can answer.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Yes.</p> <p>23 MR. SMITH: We'll mark Exhibit No. 2.</p> <p>24</p>

<p style="text-align: right;">29</p> <p>1 (Finn Deposition Exhibit No. 2 2 marked as requested.) 3 BY MR. SMITH: 4 Q. Sir, the court reporter handed to you what's 5 been marked as Finn Exhibit No. 2. Can you take some 6 time and look this over. 7 A. Okay. I looked it over. 8 Q. Do you recognize Exhibit No. 2? 9 A. Yes. 10 Q. And what is it? 11 A. It's the action complaint. 12 Q. The amended class action complaint? 13 A. Yes. 14 Q. I want to call your attention to the last 15 page, which is Exhibit A to the amended class action 16 complaint. Do you recognize this page? 17 A. Yes. 18 Q. And what is that? 19 A. It's a fax. 20 Q. Can you be more specific? 21 A. It's the fax that we sent to Mr. Davies. 22 Q. And who created this -- Strike that. 23 This is one of Grainger's fax advertisements? 24 A. Yes.</p>	<p style="text-align: right;">31</p> <p>1 something that Brenda would do, and then she would show 2 you what she would think is a final product; and then 3 you would okay it? It that how it went? 4 A. We would -- We have people on our creative 5 team that look at this. We would also work with our 6 legal team to make sure that the terms and conditions 7 are all appropriate. 8 Q. Is it a legal team within Grainger, like 9 in-staff or on-staff attorneys? 10 A. Both, yes. 11 Q. And do you know who at Grainger's legal team 12 reviewed this fax? 13 A. Yes. 14 Q. And who is that? 15 A. Aimee Nolan. 16 Q. And that's A-I-M-E-E, Aimee? 17 A. Yes. 18 Q. Anybody else? 19 A. On our Grainger legal team? 20 Q. Right. 21 A. Not that I'm aware of. 22 Q. And when was this fax advertisement created, 23 the one that's attached as Exhibit A to the complaint? 24 A. I don't know the exact date. A month before.</p>
<p style="text-align: right;">30</p> <p>1 Q. Who created this advertisement? 2 A. My team, although it doesn't look exactly 3 like the fax that we had sent. It looks a little more 4 compressed. 5 Q. Other than it looking a little more 6 compressed, does the content look the same? 7 A. Yes. 8 Q. And I'm sorry. You stated your team created 9 this advertisement, right? 10 A. Yes. 11 Q. So that's you and Brenda? 12 A. Yes. 13 Q. Can you walk me through that process? If I'm 14 understanding your testimony, generally, Brenda created 15 it, and you reviewed it or oversaw her while she 16 created it? Is that generally correct? 17 A. We had a small business team that created the 18 idea and the message. Brenda worked on -- In our 19 creative team, Brenda did this specifically. We would 20 work and put the copy points, the \$25 offer, as well as 21 the -- all the terms and conditions. We would put that 22 on paper; we would create it. 23 Q. Okay. So that process, I would like to get a 24 little more specific. When you say "we," is it</p>	<p style="text-align: right;">32</p> <p>1 I don't know. 2 Q. When you say -- And I understand that you're 3 not sure. But when you said "month before," a month 4 before it was sent? 5 A. Yes, as far as I remember. 6 Q. And I notice that on the fax itself, it says, 7 "Monthly specials" towards the top. Do you see that? 8 A. Yes. 9 Q. Was there multiple variations of the fax 10 advertisement that was sent during the time period of 11 December 2008 to 2009? 12 A. Yes. 13 Q. And how many variations? 14 A. Nine in the year of 2009, one in 2008. 15 Q. And did you and Brenda work on creating all 16 ten of those fax advertisements? 17 A. I believe Brenda took the lead on creating 18 the majority of the advertisements. 19 Q. And for each of the ten fax advertisements, 20 would you have the legal team review each one? 21 A. Yes. 22 Q. So plaintiff alleges that he received this 23 fax on December 2nd, 2009. Do you know -- which is 24 obviously at the very far end of 2009 -- was this one</p>

<p style="text-align: right;">33</p> <p>1 of the last faxes that you guys sent out?</p> <p>2 A. Yes.</p> <p>3 Q. Was it the very last?</p> <p>4 A. Yes.</p> <p>5 Q. Limited to Exhibit A here that we're talking</p> <p>6 about, are copies of this advertisement saved anywhere?</p> <p>7 A. Yes.</p> <p>8 Q. Where is it saved?</p> <p>9 A. In a secure site, secure file folder.</p> <p>10 Q. Electronic folder?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if there's any hard copies saved</p> <p>13 as well anywhere at Grainger?</p> <p>14 A. Probably.</p> <p>15 Q. And are all 10 variations of the fax</p> <p>16 advertisements that were sent -- are all of those saved</p> <p>17 at the same secure location that you're referring to?</p> <p>18 A. Yes.</p> <p>19 Q. And geographically, do you know where that</p> <p>20 secure location would be? Is there like a computer</p> <p>21 server that these are saved on?</p> <p>22 A. I don't know. I don't know. I don't know</p> <p>23 where the location of the server is or what -- I don't</p> <p>24 know.</p>	<p style="text-align: right;">35</p> <p>1 Q. If there was a meeting, would members of the</p> <p>2 small business team -- would they have been a part of</p> <p>3 that meeting if there even was one?</p> <p>4 MR. BECK: Object to foundation.</p> <p>5 Go ahead. You can answer.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Yes. Yes, there were meetings.</p> <p>8 Q. Now, were there E-mails exchanged regarding a</p> <p>9 plan to send out fax advertisements to the small</p> <p>10 businesses, you know, on a monthly basis?</p> <p>11 A. I don't know.</p> <p>12 Q. So if there were E-mails exchanged, you</p> <p>13 didn't receive any of them; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. I want to call your attention to the small</p> <p>16 print at the bottom of Exhibit A. Looks like there's,</p> <p>17 generally, two paragraphs down there. So I want to</p> <p>18 call your attention to the first paragraph. It starts,</p> <p>19 "Offer valid for the intended recipient." Do you see</p> <p>20 that?</p> <p>21 A. Yes, but -- Yes. But it's not that small. I</p> <p>22 can read it.</p> <p>23 Q. Would you agree it's smaller than all the</p> <p>24 other typed font on this exhibit?</p>
<p style="text-align: right;">34</p> <p>1 Q. Okay. You just know that they're saved</p> <p>2 somewhere?</p> <p>3 A. Yes.</p> <p>4 Q. And so because the subject fax refers to</p> <p>5 monthly specials -- in over approximately a one-year</p> <p>6 period, you sent about ten variations of these fax</p> <p>7 advertisements -- I'm gathering that there was a plan</p> <p>8 to send these out once a month, roughly; is that</p> <p>9 accurate?</p> <p>10 A. Not every month.</p> <p>11 Q. It turned out to be not every month. But was</p> <p>12 there a plan of action, when the small business team</p> <p>13 decided to send out these advertisements, to market</p> <p>14 small businesses by fax once a month?</p> <p>15 A. Yes.</p> <p>16 Q. And was there a meeting that took place to</p> <p>17 discuss that fax advertisement plan?</p> <p>18 A. Probably. I don't know of any specific</p> <p>19 meeting that was set up.</p> <p>20 Q. Go ahead. I'm sorry.</p> <p>21 A. No, I don't know of any specific meeting.</p> <p>22 Q. If there was a meeting, you weren't involved</p> <p>23 with it or in it?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">36</p> <p>1 A. Yes.</p> <p>2 Q. Do you know who drafted this language limited</p> <p>3 to that first paragraph?</p> <p>4 A. Could you restate that question?</p> <p>5 Q. Sure. I'm focusing your attention on the</p> <p>6 paragraph, "Offer valid for the intended recipient."</p> <p>7 Do you know who drafted that language?</p> <p>8 A. Yes. Our team.</p> <p>9 Q. So you and Brenda?</p> <p>10 A. Brenda did.</p> <p>11 Q. Brenda did.</p> <p>12 Was that language then reviewed by the legal</p> <p>13 team?</p> <p>14 A. Yes, it was.</p> <p>15 Q. And do you know if the language changed at</p> <p>16 all after the legal team reviewed it?</p> <p>17 A. It wasn't changed.</p> <p>18 Q. For the other nine variations of the fax</p> <p>19 advertisement that was sent, did the content of this</p> <p>20 paragraph change? And I understand it refers to</p> <p>21 specific dates. So those dates would -- Assume they</p> <p>22 would change, but the content -- Strike that.</p> <p>23 For the other nine variations of the faxes</p> <p>24 that were sent, did this "offer valid" paragraph -- was</p>

<p style="text-align: right;">37</p> <p>1 this included on all those other nine variations?</p> <p>2 A. Yes.</p> <p>3 Q. And was the content of those other nine</p> <p>4 variations the same?</p> <p>5 A. Yes.</p> <p>6 Q. I want to call your attention to the bottom</p> <p>7 paragraph, the one that begins, "If you do not wish to</p> <p>8 receive faxes." Do you see that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And who drafted that language?</p> <p>11 A. We did, with the assistance of our legal</p> <p>12 team.</p> <p>13 Q. When you say "we," do you mean Brenda again?</p> <p>14 A. Yes.</p> <p>15 Q. And then what do you mean by with the</p> <p>16 assistance of your legal team?</p> <p>17 MR. BECK: He is not going to testify as to advice</p> <p>18 of counsel that was given by legal other than that they</p> <p>19 reviewed it. Do you want to restate the question?</p> <p>20 MR. SMITH: Sure. I wasn't interested in that</p> <p>21 kind of response.</p> <p>22 MR. BECK: I'm not suggesting you were. I just</p> <p>23 want to make sure that Mr. Finn understands that.</p> <p>24</p>	<p style="text-align: right;">39</p> <p>1 Q. So that's telling --</p> <p>2 A. In 2008, there was a few little word changes</p> <p>3 on 2008 that were slightly different.</p> <p>4 Q. And there was only one fax sent in 2008,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. So that one fax was slightly different than</p> <p>8 the fax that's attached to the complaint; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And do you recall what that difference was?</p> <p>12 A. Not exactly. Not exactly.</p> <p>13 Q. Okay. But that 2008 fax advertisement is</p> <p>14 saved somewhere at Grainger, right?</p> <p>15 A. Yes.</p> <p>16 Q. And did the location of that bottom</p> <p>17 paragraph, with respect to it being on the bottom of</p> <p>18 the fax, for all ten variations, did the location</p> <p>19 change in any way?</p> <p>20 A. No.</p> <p>21 Q. Did the size of the print change in any way?</p> <p>22 A. No.</p> <p>23 Q. And was it always underneath the "offer</p> <p>24 valid" paragraph that's included on this exhibit?</p>
<p style="text-align: right;">38</p> <p>1 BY MR. SMITH:</p> <p>2 Q. Did Brenda or you or both of you send this</p> <p>3 bottom paragraph to a legal team to review?</p> <p>4 A. Yes.</p> <p>5 Q. And did the legal team change the language in</p> <p>6 any way?</p> <p>7 A. The language on this fax is what the legal</p> <p>8 team approved.</p> <p>9 Q. Okay. Was this the same version that Brenda</p> <p>10 sent to the legal team?</p> <p>11 A. I don't -- I don't remember. I don't know.</p> <p>12 Q. If there were variations of the language, so</p> <p>13 I guess, drafts of this fax advertisement, would those</p> <p>14 drafts be saved at Grainger anywhere?</p> <p>15 A. Possibly. I don't know.</p> <p>16 Q. Who would know the answer to that question?</p> <p>17 A. Probably Brenda.</p> <p>18 Q. I don't know if I asked this: Does Brenda</p> <p>19 still work at Grainger?</p> <p>20 A. Yes.</p> <p>21 Q. And the other nine variations of this fax</p> <p>22 advertisement that Grainger sent between December 2008</p> <p>23 and 2009, did this bottom paragraph change in any way?</p> <p>24 A. For 2009, it didn't change.</p>	<p style="text-align: right;">40</p> <p>1 A. That there was a space and an indent.</p> <p>2 Q. There is a space and an indent where?</p> <p>3 A. A space between the first paragraph and the</p> <p>4 second paragraph and then an indent.</p> <p>5 Q. The first paragraph is indented?</p> <p>6 A. Yes. Well -- Yes.</p> <p>7 Q. That's what it looks like on this --</p> <p>8 A. Yes.</p> <p>9 Q. -- fax, right?</p> <p>10 So is that set up the same for all ten</p> <p>11 variations of the fax advertisement?</p> <p>12 A. Yes.</p> <p>13 Q. I want to change gears a little bit towards</p> <p>14 the plaintiff and move way a little bit from the fax</p> <p>15 advertisement and talk a little bit about the</p> <p>16 plaintiff. How did Grainger find plaintiff's fax</p> <p>17 number?</p> <p>18 A. We used InfoUSA.</p> <p>19 Q. And what do you mean by that? You used</p> <p>20 InfoUSA?</p> <p>21 A. We had a contractual agreement with InfoUSA</p> <p>22 to get fax numbers of existing customers.</p> <p>23 Q. So it was limited to existing customers only?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">41</p> <p>1 Q. And do you know -- And I know you said you 2 reviewed some of these contracts to prepare for today's 3 deposition. Do you know when Grainger entered into 4 this contract with InfoUSA? 5 A. I don't remember when the contract for 6 InfoUSA for Grainger was done, but we did a statement 7 of work specifically for this work. 8 Q. Statement of work? 9 A. Yes. 10 Q. I don't know what that means. Can you 11 explain it to me? 12 A. It's a contract that gives InfoUSA direction 13 on what to do. 14 Q. Okay. So if I'm understanding correctly, 15 Grainger already had an existing relationship with 16 InfoUSA, and you entered into sort of a separate or 17 ancillary agreement with InfoUSA regarding the fax 18 advertisement plan -- 19 A. Yes. 20 Q. -- of December 2008 and 2009? 21 A. Could you restate that question again? I'm 22 sorry. 23 Q. Sure. I understand that Grainger and InfoUSA 24 had a contractual relationship before December of 2008,</p>	<p style="text-align: right;">43</p> <p>1 existing customer could do that? 2 A. They could give their fax number to their 3 seller, their salesperson. We may get it when they set 4 up an account. When a customer applies for credit, 5 sometimes that is asked. They may go into a branch -- 6 one of our branches and give it to the counter 7 associate. 8 Q. Any other ways you can think of? 9 A. No. 10 Q. Through any of these ways in which Grainger 11 would obtain a customer's fax number, did Grainger 12 inform the customer that they would use it to send them 13 fax advertisements? 14 A. Not specifically, no. 15 Q. So through these various ways that you 16 described in which a customer could give Grainger a fax 17 number, it was to -- Strike that. 18 I want to talk a little bit about early/mid 19 2009 in which you worked with InfoUSA to get fax 20 numbers. 21 A. Okay. 22 Q. Can you walk me through that process? And 23 here's how I'm understanding it: that InfoUSA has a 24 giant database of customers, and somehow they can</p>
<p style="text-align: right;">42</p> <p>1 correct? 2 A. I believe so. 3 Q. And sometime around December of 2008, 4 Grainger and InfoUSA entered in a -- sort of a separate 5 agreement that you're calling a statement of work to 6 help Grainger with this fax advertising campaign; is 7 that right? 8 A. No. 9 Q. Okay. 10 A. We constructed a statement of work with 11 InfoUSA, I believe, early to mid 2009 for the purposes 12 of getting fax numbers for our existing customers. 13 Q. We'll talk about that process in a minute. 14 But I first want to talk about, what did Grainger do 15 with respect to the fax recipients before early to mid 16 2009? 17 A. Our existing customers gave us their fax 18 number. 19 Q. So let's talk about that process. Can you 20 explain in the -- Strike that. 21 Is there more than one way that an existing 22 customer would give Grainger their fax number? 23 A. Yeah. 24 Q. Can you give me the various ways that an</p>	<p style="text-align: right;">44</p> <p>1 cross-check it with your existing customers in some 2 way. Was that what was going on? 3 A. To a degree. We gave InfoUSA existing 4 customers of ours in which we didn't have a fax number. 5 Q. Okay. 6 A. InfoUSA found fax numbers in 7 publicly-available sources to give us fax numbers of 8 our existing customers. 9 Q. Okay. And when you say "publicly-available 10 sources," what do you mean by that? 11 A. Yellow Pages, places that -- places where the 12 customer gives their fax number that is publicly 13 available. 14 Q. And I -- And how do you know that's what 15 InfoUSA did to get their list of fax numbers? 16 A. Could you ask that question again? 17 Q. Sure. You had testified as to what InfoUSA 18 would do. And I know you don't work there, and so 19 you're making an assumption that that's what they're 20 doing, at least from my position. So I would like to 21 know what your basis is for testifying that InfoUSA 22 would pull fax numbers off of publicly-available 23 sources. 24 A. I guess it's two things: One, in the</p>

<p style="text-align: right;">45</p> <p>1 contract, they went with -- they weren't going to take 2 any faxes that were against this Junk Fax Protection 3 law. So that's number 1. Number 2, is when we were 4 investigating this particular thing, we asked them and 5 they told us that it was from the Yellow Pages. 6 Q. Okay. Is that in writing anywhere? Is there 7 a record of that, to your knowledge? 8 A. In the contract? 9 Q. Anywhere. 10 MR. BECK: Object to the form as vague. I'm not 11 sure he knows what you're asking about. 12 BY MR. SMITH: 13 Q. Well, you said that there's two ways, and the 14 second way was they told you that -- or you asked them 15 that. In any of the -- You're indicating that there 16 was a communication -- direct communication between 17 somebody at Grainger and InfoUSA that they were going 18 to pull -- that InfoUSA was going to pull these fax 19 numbers from a publicly-available source. All I'm 20 asking, is there a record of that communication? 21 A. I don't know. 22 Q. Do you know who at Grainger would be able to 23 answer that question? 24 A. The question being -- Could you --</p>	<p style="text-align: right;">47</p> <p>1 MR. BECK: Object to the form. It's vague. I 2 don't understand. 3 If you understand it, you can answer. 4 BY THE WITNESS: 5 A. Can you say the question differently? 6 Q. Sure. Did you have direct communication with 7 InfoUSA to learn that InfoUSA would pull fax numbers 8 from publicly-available sources? 9 A. No. 10 Q. So what's your belief that that's what 11 happened? 12 A. Because my belief is based on the fact that 13 they adhere to the Junk Fax Protection Act and that we 14 had conversations and learned about this, that that's 15 what's been stated by InfoUSA. 16 Q. Okay. I guess I'm still unclear on how you 17 learned that. Was this through talking with somebody 18 while preparing for today's deposition, or is that your 19 belief that existed, you know, back in 2009 when this 20 was happening? 21 A. When we were preparing for this deposition 22 and we were talking about this, we talked to InfoUSA. 23 And we asked them, "Where did you get the fax number 24 for Mr. Davies?" They told us that it came from Yellow</p>
<p style="text-align: right;">46</p> <p>1 Q. You had indicated, I think -- and correct me 2 if I'm wrong -- that there was some sort of 3 communication between Grainger and InfoUSA in which 4 InfoUSA informed Grainger that they're pulling these 5 fax numbers from publicly-available sources; is that 6 right? 7 A. That's what I believe to be true, yes. 8 Q. Okay. And so my question is, is there any 9 record, any E-mail, correspondence, anything of that 10 sort, a written-down record of that communication? 11 A. I don't know. 12 Q. And then the follow-up question was, do you 13 know who at Grainger would -- if such a communication 14 exists, who would know more than you? 15 MR. BECK: Object to the form, calls for 16 speculation. 17 You can answer if you can. 18 BY THE WITNESS: 19 A. I don't know. 20 Q. In follow-up to that, if you're not sure if 21 there is a record, what's the basis for your belief 22 that there was a communication between InfoUSA and 23 Grainger that they were going to pull fax numbers from 24 a publicly-available source?</p>	<p style="text-align: right;">48</p> <p>1 Pages, publicly-available sources. 2 Q. And who did you speak with at InfoUSA? 3 A. I don't remember the name. 4 Q. And did you E-mail anybody at InfoUSA to set 5 up that conference or that telephone call? 6 A. That was handled by our legal team. 7 Q. And when did that conversation take place? 8 A. I don't know the exact date. Maybe April or 9 May. 10 Q. So it wasn't in preparation for this 11 deposition? It sounds like it happened sometime after 12 the complaint was filed and before you received the 13 deposition notice. 14 A. I don't remember exactly when the timing was. 15 Q. And so in the context of that conversation, 16 you were talking about Mr. Davies specifically; is that 17 right? 18 A. Yes. 19 Q. And somebody from InfoUSA told you, "We 20 pulled his number from the Yellow Pages"? 21 A. Yes. 22 Q. Did they go beyond Mr. Davies in particular 23 and talk about their practice? 24 A. They may have, yeah. I don't remember the</p>

<p style="text-align: right;">49</p> <p>1 exact specifics of the -- that, but they may have.</p> <p>2 Q. And was it a call that took place in April or</p> <p>3 May of 2013?</p> <p>4 A. That I was involved in, yes.</p> <p>5 Q. And who else was on that call?</p> <p>6 A. Oh, boy, I don't remember. Somebody from our</p> <p>7 legal team. I don't remember all the -- I don't</p> <p>8 remember the person from Info.</p> <p>9 Q. Was Brenda on the call?</p> <p>10 A. No.</p> <p>11 Q. So there's you, one person from Grainger's</p> <p>12 legal team?</p> <p>13 A. Yes.</p> <p>14 Q. And somebody from --</p> <p>15 A. Info.</p> <p>16 Q. -- InfoUSA?</p> <p>17 A. Yeah, I think so. I don't recall exactly who</p> <p>18 was in the room.</p> <p>19 Q. It was an in-person conference?</p> <p>20 A. Oh, no, no. InfoUSA called in.</p> <p>21 MR. BECK: Jim, we've been going about an hour.</p> <p>22 Would now be a decent time to take a short break?</p> <p>23 MR. SMITH: That would be great.</p> <p>24 (Discussion off the record.)</p>	<p style="text-align: right;">51</p> <p>1 A. Existing customers who we define as small</p> <p>2 business customers who we didn't have a fax number for.</p> <p>3 Q. Was there any other criteria?</p> <p>4 A. The criteria is based on what we define as</p> <p>5 small business.</p> <p>6 Q. Okay. So as I understand it, you sent</p> <p>7 InfoUSA a list of Grainger's existing customers who</p> <p>8 Grainger defined as small business and who Grainger did</p> <p>9 not have a fax number; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And how would Grainger define what is a small</p> <p>12 business is for purposes of this list?</p> <p>13 A. Their MRO potential is less than \$25,000 a</p> <p>14 year.</p> <p>15 Q. And what is MRO potential?</p> <p>16 A. It's maintenance, repair, and operating</p> <p>17 supplies. It's the things that Grainger sells. So</p> <p>18 these are customers that spend less than \$25,000 on</p> <p>19 those materials in total.</p> <p>20 Q. And how does Grainger track that kind of</p> <p>21 information?</p> <p>22 A. By the type of company that they are,</p> <p>23 square-foot size, those types of things, we can</p> <p>24 estimate how much they spend.</p>
<p style="text-align: right;">50</p> <p>1 BY MR. SMITH:</p> <p>2 Q. So I want to talk some more about how</p> <p>3 Grainger and InfoUSA sort of created the list that you</p> <p>4 were talking about.</p> <p>5 A. Okay.</p> <p>6 Q. You say that in early to mid 2009 is when you</p> <p>7 started -- when you got the list from -- I'm calling it</p> <p>8 a list; I don't know if that's the right way to do</p> <p>9 it -- the list from InfoUSA of your customers with fax</p> <p>10 numbers?</p> <p>11 A. Not exactly. We have a list of our existing</p> <p>12 customers which we provided to InfoUSA to give us --</p> <p>13 Q. Okay. Let's stop there. I want to walk</p> <p>14 through that process. You had earlier testified you</p> <p>15 have about 1.8 million customers nationwide; is that</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. Are all of those customers in Grainger's</p> <p>19 database?</p> <p>20 A. Yes.</p> <p>21 Q. So did you give InfoUSA the entire database</p> <p>22 of customers?</p> <p>23 A. No.</p> <p>24 Q. What list did you give to them?</p>	<p style="text-align: right;">52</p> <p>1 Q. Okay. And then the no fax numbers is</p> <p>2 self-explanatory. In your database -- In Grainger's</p> <p>3 database, you have a list of company names, and these</p> <p>4 particular customers did not have a fax number listed,</p> <p>5 right?</p> <p>6 A. Correct. It was not listed in our database.</p> <p>7 Q. And were you involved in sending that list to</p> <p>8 InfoUSA?</p> <p>9 A. I was not physically -- I was not personally</p> <p>10 responsible for sending that list to InfoUSA.</p> <p>11 Q. Do you know how many small businesses were on</p> <p>12 that list?</p> <p>13 A. Yeah.</p> <p>14 Q. How many?</p> <p>15 MR. BECK: Hold on. I think this is well beyond</p> <p>16 the scope of the notice. We'll stipulate that it was a</p> <p>17 list that had a lot of numbers on it.</p> <p>18 MR. SMITH: So with respect to the specific</p> <p>19 numbers, you're going to object and instruct the</p> <p>20 witness not to answer?</p> <p>21 MR. BECK: Correct. It's beyond the scope of the</p> <p>22 notice, which is supposed to be about Davies.</p> <p>23 BY MR. SMITH:</p> <p>24 Q. And in what form did Grainger send the list</p>

<p style="text-align: right;">53</p> <p>1 to InfoUSA? And what I mean by that, was it electronic 2 form? Was it hard copy? Did you E-mail it? Mail it? 3 You know, that kind of thing. 4 A. I don't know exactly. Certainly, 5 electronically. I don't know what other -- I don't 6 know if it was E-mails or if it was put to an HMTTP 7 site. I don't know. 8 Q. Okay. And then do you have an understanding 9 of what InfoUSA did with that list that was sent to 10 them? 11 A. Other than what I've already explained, no, I 12 don't have any other information. 13 Q. Okay. And so did InfoUSA then send you back 14 a list of existing small business customers with now 15 fax numbers? 16 A. Yes. 17 Q. And what did you do -- What did Grainger do 18 with that list? 19 A. We took that list and gave it to Optima 20 Direct to transact the faxes. 21 Q. When you say "transact" -- 22 A. Transmit the faxes. 23 Q. Before you obtained this list from InfoUSA, 24 was Optima Direct transmitting the earlier fax</p>	<p style="text-align: right;">55</p> <p>1 prepare for today's deposition; is that right? 2 A. Yeah. 3 Q. Do you remember when that contract was 4 entered? 5 A. Not exactly. Not exactly. It would have to 6 have been December of 2008 or so. 7 Q. Did you bring those contracts with you today? 8 A. No. 9 Q. Do you know how the -- by reviewing that 10 contract, how the Optima Direct was to be paid under 11 the terms of that agreement? 12 A. Say that -- Ask the question again. 13 Q. Sure. Do you know how Optima Direct was to 14 be paid through the contract between Optima Direct and 15 Grainger regarding the faxing campaign from 16 December 2008 to 2009? 17 A. Yeah, yes. Some of the payment was based on 18 the volume of faxes that they transmitted. They also 19 received payment on the opt-out support that they 20 provided. I believe there may also have been a program 21 set up, you know, to ... 22 Q. Any other way that they got paid? 23 A. Not that I -- No, not that I'm aware of, no. 24 Q. So they were not paid on successfully-sent</p>
<p style="text-align: right;">54</p> <p>1 advertisements that were sent out, the one in 2008 and 2 the earlier ones in 2009? 3 A. Yes, yes. The ones in 2009, yes. I don't 4 know about 2008. 5 Q. Okay. 6 A. I assume they were. I don't know exactly. 7 Q. Now, InfoUSA didn't directly send their list 8 to Optima Direct, right? It went through Grainger 9 first, and then Grainger sent the list to Optima 10 Direct? 11 A. Yes. 12 Q. Does Grainger save that list in any, you 13 know, unique spot outside of the regular customer 14 database? 15 A. That, I'm not sure. 16 Q. Did you work with Optima Direct in any way to 17 transmit the subject fax advertisements? 18 A. No. 19 Q. Who at Grainger did? 20 A. I believe it was two of the gentlemen I 21 mentioned earlier: John Gartner, Rohan Thromballi, I 22 believe. 23 Q. And I think you mentioned that contract with 24 Optima Direct was one of the things you reviewed to</p>	<p style="text-align: right;">56</p> <p>1 transmissions, for example? 2 MR. BECK: Object to the form. I think that 3 misstates the testimony. 4 BY MR. SMITH: 5 Q. Let me ask it a different way. 6 A. Okay. 7 Q. Do you know whether Optima Direct was paid on 8 whether a fax transmission was successfully sent or 9 not? 10 A. I don't know that specific. 11 Q. So when you say "volume of faxes 12 transmitted," you're not exactly sure what that means? 13 A. I'm not exactly sure if it was the 14 successfully faxed or if it was the initial sent fax. 15 I don't know. 16 Q. Are you familiar with the opt-out support 17 that Optima Direct provided Grainger with respect to 18 how it worked? 19 A. Yes. 20 Q. And can you explain to me how it worked? 21 A. Sure. They provided a toll-free 800 number 22 for customers to call to opt out as well as a toll-free 23 fax number, should the recipient want to not receive 24 any more faxes. And that was the support.</p>

<p>57</p> <p>1 Q. So if a customer who received one of these</p> <p>2 faxes wanted to opt out and they got in touch with</p> <p>3 Optima Direct, what would happen next; do you know?</p> <p>4 A. Yes. Optima Direct would flag their fax</p> <p>5 number that the customer indicated that they no longer</p> <p>6 wanted a fax, and that would go on a suppression file</p> <p>7 so we would no longer contact that customer per the</p> <p>8 customer's wishes.</p> <p>9 Q. I'm sorry. Did you say a "suppression file"?</p> <p>10 A. They would indicate that that customer no</p> <p>11 longer wished to receive a fax anymore.</p> <p>12 Q. Would that be relayed to Grainger in any way?</p> <p>13 A. Yes, we would get that suppression file.</p> <p>14 Q. So then Grainger's database would be updated,</p> <p>15 the SAP or the ERP?</p> <p>16 MR. BECK: And I think this is beyond the scope of</p> <p>17 the notice, but you can answer if you know this.</p> <p>18 BY THE WITNESS:</p> <p>19 A. The fax numbers that -- we never put it back</p> <p>20 into our database, into our ERP system.</p> <p>21 Q. The fax numbers?</p> <p>22 A. Correct.</p> <p>23 Q. So the fax numbers that you got from InfoUSA</p> <p>24 were never put into Grainger's ERP database?</p>	<p>59</p> <p>1 MR. BECK: Again, this is beyond the scope, but</p> <p>2 you can answer if you know this.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I don't know if the actual lists were</p> <p>5 combined physically. I don't know. When we sent out</p> <p>6 fax -- We had a group of customers that were our</p> <p>7 existing customers who gave us their fax as well as</p> <p>8 existing customers that we received faxes from InfoUSA.</p> <p>9 Q. Okay. Now, I know we spoke about the ten</p> <p>10 variations of the faxes attached to the complaint. Did</p> <p>11 Grainger, during the same time period, send out any</p> <p>12 other fax advertisements?</p> <p>13 A. No.</p> <p>14 Q. If I call your attention back to</p> <p>15 Exhibit No. 2, the subject fax, which is the last page</p> <p>16 of Exhibit 2, on the very top in that header, do you</p> <p>17 see that?</p> <p>18 A. Yes.</p> <p>19 Q. There's a toll-free number (866) 404-3933.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know whose number that is?</p> <p>23 A. No, I don't.</p> <p>24 Q. Was there any direct communication with</p>
<p>58</p> <p>1 A. Correct.</p> <p>2 Q. So this is just a separate database?</p> <p>3 A. Correct.</p> <p>4 Q. Was that database -- Strike that.</p> <p>5 Now, I understand that you sent to InfoUSA</p> <p>6 just small businesses with no fax number, right?</p> <p>7 A. Correct.</p> <p>8 Q. But the first few faxes that you sent out</p> <p>9 before working with InfoUSA in that regard, you had</p> <p>10 those existing customer's fax numbers, correct?</p> <p>11 A. That is correct.</p> <p>12 Q. And were those faxes being targeted to just</p> <p>13 small businesses at that time as well?</p> <p>14 A. Yes.</p> <p>15 Q. So if I'm understanding right, you also had a</p> <p>16 list of small businesses with fax numbers before</p> <p>17 working with InfoUSA; is that right?</p> <p>18 A. That is correct.</p> <p>19 Q. And did you combine that list with the list</p> <p>20 that you received from InfoUSA?</p> <p>21 A. I don't understand the word "combine."</p> <p>22 Q. To create one, you know, larger list of all</p> <p>23 small business customers now that you have their fax</p> <p>24 numbers.</p>	<p>60</p> <p>1 plaintiff in which Grainger asked him if it's okay if</p> <p>2 Grainger sent him a fax advertisement?</p> <p>3 A. No.</p> <p>4 Q. Was there any direct communication with any</p> <p>5 of the fax recipients in which Grainger asked the</p> <p>6 recipients if it was okay if Grainger sent them a fax</p> <p>7 advertisement?</p> <p>8 A. No.</p> <p>9 Q. Other than the subject fax advertisement</p> <p>10 that's -- at issue here in this lawsuit, did Grainger</p> <p>11 send any other faxes to plaintiff that you're aware of</p> <p>12 not limited to advertisements?</p> <p>13 A. Say that -- Restate that question.</p> <p>14 Q. Other than the subject fax advertisement</p> <p>15 that's attached to Exhibit No. 2, are you aware of</p> <p>16 whether Grainger ever faxed anything else to plaintiff?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Do you know whether Grainger sent any of the</p> <p>19 other nine variations of the fax to plaintiff?</p> <p>20 A. No, we did not.</p> <p>21 Q. Do you know why Mr. Davies was included on</p> <p>22 this fax transmission and not any of the earlier ones?</p> <p>23 A. Mr. Davies was included in this fax because</p> <p>24 he was an existing customer that had done business with</p>

<p style="text-align: right;">61</p> <p>1 us. We do -- No, there's no, really, other reason why.</p> <p>2 It's just -- We do test control with some of the</p> <p>3 different messaging, and his name was selected to be in</p> <p>4 December for this fax.</p> <p>5 Q. What do you mean by "test control"?</p> <p>6 A. We try to determine the success of this</p> <p>7 campaign. And there are certain customers that we</p> <p>8 could send the fax to that we don't.</p> <p>9 Q. And who was involved in that process?</p> <p>10 A. Our analytics team.</p> <p>11 Q. Anybody else?</p> <p>12 A. No.</p> <p>13 Q. Were there any other outside companies used</p> <p>14 to work with your analytics team?</p> <p>15 A. No, not that I'm aware.</p> <p>16 Q. So if I understand you correctly, once the</p> <p>17 Optima Direct would receive the list, you know -- I'm</p> <p>18 going to call it the master list. If that's not the</p> <p>19 right way to call it, tell me. But what I'm referring</p> <p>20 to is the list from InfoUSA of the small business</p> <p>21 existing customers; now they have fax numbers. Then</p> <p>22 you forward that over to Optima Direct. I'm going to</p> <p>23 call that the master list only because it sounds like</p> <p>24 they didn't -- for every single of the fax</p>	<p style="text-align: right;">63</p> <p>1 Q. Okay. And was that done by E-mail?</p> <p>2 A. Of sending the file over to Optima Direct?</p> <p>3 Q. Right.</p> <p>4 A. I don't know.</p> <p>5 Q. And do you know how the actual fax</p> <p>6 advertisement was sent to Optima Direct?</p> <p>7 A. I don't know for certain. May have been</p> <p>8 E-mailed, the advertisement itself.</p> <p>9 Q. Would John Gartner and Rohan be the people to</p> <p>10 talk to about what -- the communications between Optima</p> <p>11 Direct and Grainger with each particular fax</p> <p>12 transmission?</p> <p>13 A. Maybe, yeah. Could be, yeah.</p> <p>14 Q. Once Optima Direct had the fax advertisement</p> <p>15 to be sent and then a subset of the list of who to</p> <p>16 target, was there any communication back to Grainger as</p> <p>17 far as, you know, "Good news. We're done. And here's</p> <p>18 how many were sent," et cetera, or "Here's how many</p> <p>19 were tried. Here's how many were successful"?</p> <p>20 A. Yes. Optima provided us reports.</p> <p>21 Q. And were they detailed reports with respect</p> <p>22 to each fax number?</p> <p>23 A. I never saw -- I don't know if there were</p> <p>24 reports like that. I never saw those reports.</p>
<p style="text-align: right;">62</p> <p>1 transmissions, they didn't target everybody on that</p> <p>2 list, correct?</p> <p>3 A. That's --</p> <p>4 MR. BECK: Object to the form.</p> <p>5 You can answer.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Yeah, that's correct. We received a list</p> <p>8 back from InfoUSA; and then based on that list, our</p> <p>9 analytics team would select existing customers that</p> <p>10 would get the fax every month, you know, which</p> <p>11 customers would get the fax each month.</p> <p>12 Q. And would you or Brenda work with the</p> <p>13 analytics team to update or change the fax</p> <p>14 advertisement based on where the analytics team wanted</p> <p>15 to send that particular fax?</p> <p>16 A. No.</p> <p>17 Q. Do you know how Optima Direct was informed of</p> <p>18 who to target for a particular fax transmission?</p> <p>19 A. We --</p> <p>20 MR. BECK: Object to the form.</p> <p>21 Go ahead.</p> <p>22 BY THE WITNESS:</p> <p>23 A. We gave them -- We gave them selection of the</p> <p>24 master file to send out to customers.</p>	<p style="text-align: right;">64</p> <p>1 Q. And who would be the people to talk to at</p> <p>2 Grainger regarding those reports?</p> <p>3 A. The detailed reports you're referring to,</p> <p>4 probably the gentlemen that you talked about earlier.</p> <p>5 Q. John and Rohan?</p> <p>6 A. And Rohan.</p> <p>7 Q. Is it Rohan?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. I have chicken scratch for writing.</p> <p>10 Do you know where Optima Direct is located?</p> <p>11 A. Boy, I can't say for certain that I do. I</p> <p>12 don't know.</p> <p>13 MR. SMITH: We'll mark this as number 3.</p> <p>14 BY MR. SMITH:</p> <p>15 Q. Sir, I'm going to hand to you what's been</p> <p>16 marked as Finn Exhibit No. 3. Could you take some time</p> <p>17 to look this over?</p> <p>18 A. Sure. Okay.</p> <p>19 Q. Do you recognize Exhibit 3?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 A. On the first page, it looks like a screen</p> <p>23 shot of Mr. Davies -- some account information, and a</p> <p>24 purchase.</p>

<p style="text-align: right;">65</p> <p>1 Q. Okay. So is this the big database that</p> <p>2 Grainger has that you were referring to earlier in your</p> <p>3 deposition?</p> <p>4 A. This is one screen shot of -- Looks like a</p> <p>5 transaction in particular.</p> <p>6 Q. Okay. And I notice his phone number is</p> <p>7 listed here on page 1, but his fax number is not.</p> <p>8 A. Correct.</p> <p>9 Q. If you had Grainger's fax number from him,</p> <p>10 would his fax number be listed here?</p> <p>11 MR. BECK: Object to the form.</p> <p>12 Go ahead.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I don't know. I don't know based on the</p> <p>15 screen. It looks like -- If we had the fax -- I don't</p> <p>16 know. It looks like -- If we had a fax number, there</p> <p>17 would have been a fax and then nothing next to it. So</p> <p>18 I don't know.</p> <p>19 Q. Okay. And, you know, I think this was, you</p> <p>20 know, talked about, but I don't know if we really</p> <p>21 clarified it. For the plaintiff in this case in</p> <p>22 particular, he did not give you his fax number,</p> <p>23 correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">67</p> <p>1 A. He must have provided it when he became a new</p> <p>2 customer.</p> <p>3 Q. Is that a necessary component for a new</p> <p>4 customer, to give Grainger their home address or their</p> <p>5 business address?</p> <p>6 A. Yes.</p> <p>7 Q. Is it the same thing with their phone number;</p> <p>8 it's part of the process to give Grainger their phone</p> <p>9 number?</p> <p>10 A. Yes.</p> <p>11 Q. Can a customer choose not go give Grainger</p> <p>12 that information?</p> <p>13 A. I would expect, sure. I would think, yes.</p> <p>14 Q. And then underneath here, it looks like a</p> <p>15 transaction from September 15th, 2008?</p> <p>16 A. Mm-hmm.</p> <p>17 Q. Is that correct?</p> <p>18 A. Yes. This is a transaction that Mr. Davies</p> <p>19 bought a dehumidifier, \$221.</p> <p>20 Q. How do you know it's a dehumidifier?</p> <p>21 A. Because on the other page, it starts to</p> <p>22 detail out some of those -- specific purchase. I don't</p> <p>23 know that from this.</p> <p>24 Q. You don't know it from page 1?</p>
<p style="text-align: right;">66</p> <p>1 Q. He was part of the group of the small</p> <p>2 business with no fax number that you sent to InfoUSA?</p> <p>3 A. That is correct.</p> <p>4 Q. And then InfoUSA found his fax number and</p> <p>5 gave it to you?</p> <p>6 A. Correct.</p> <p>7 Q. So still focusing on the first page of</p> <p>8 Exhibit No. 3, it looks like there's a</p> <p>9 Customer No. 835800897; is that right?</p> <p>10 A. That's correct, yep.</p> <p>11 Q. And does each -- Every time -- Can you</p> <p>12 explain that for me? How does a person get a customer</p> <p>13 number at Grainger?</p> <p>14 A. They became a customer of ours. So every</p> <p>15 customer gets a customer number.</p> <p>16 Q. So the first transaction -- I don't think</p> <p>17 I've ever shopped at Grainger; but if I did, my first</p> <p>18 time, I would be given a customer number?</p> <p>19 A. That's correct.</p> <p>20 Q. And this customer number stays with Davies</p> <p>21 Home Services for the life of his future purchases?</p> <p>22 A. Yes.</p> <p>23 Q. And how did you obtain his -- the contact</p> <p>24 information that's listed here on the first page?</p>	<p style="text-align: right;">68</p> <p>1 A. From page 1, correct.</p> <p>2 Q. Can you identify for the record pages 2, 3,</p> <p>3 and 4?</p> <p>4 A. I'm not sure what you mean "identify." Like</p> <p>5 describe?</p> <p>6 Q. Describe what it is.</p> <p>7 A. Yeah. Okay. So on page 2 --</p> <p>8 Q. Strike that.</p> <p>9 What is it? On page 2, 3, and 4, is this the</p> <p>10 same -- is this a printout of the same database?</p> <p>11 A. This is a printout of Mr. Davies' purchase</p> <p>12 history with Grainger from when he first -- His first</p> <p>13 purchase is indicated on February 16th, 1994, all the</p> <p>14 way to his final purchase on September 15th, 2008.</p> <p>15 Q. Okay. And there's been no record of him</p> <p>16 making any other purchases after September 15th, 2008?</p> <p>17 A. That is correct.</p> <p>18 Q. And how is this information inputted?</p> <p>19 MR. BECK: Beyond the scope, but if you know.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I don't know specifically. Customer</p> <p>22 purchases something, and the item that they order along</p> <p>23 with the dates and the different types of information</p> <p>24 is automatically put into certain --</p>

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1 Q. Is this all done electronically with various
2 software --
3 A. I believe so, yes.
4 Q. -- and hardware and things that are beyond my
5 ability to understand?
6 A. I believe so, yes.
7 Q. And I still don't see "dehumidifier" on any
8 of these pages?
9 A. No. That would be indicated on page 3, under
10 material code. MTRL is the second column. And those
11 are -- Those are Grainger item numbers.
12 Q. And you know that LDGX4 is a dehumidifier?
13 A. Sure do.
14 Q. Do you know what 3WE70 is?
15 A. It's a blanket.
16 Q. That's impressive.
17 What about 9N999?
18 A. That's a replacement part.
19 MR. BECK: He's prepared. What can I say?
20 MR. SMITH: Pretty good.
21 BY MR. SMITH:
22 Q. So when Mr. Davies goes to Grainger and
23 purchases these items, it doesn't matter whether he
24 pays cash or check or credit card, if you make any

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1 purchase there, this information will be automatically
2 generated?
3 A. Yes.
4 MR. SMITH: Mark this as number 4.
5 (Finn Deposition Exhibit No. 4
6 marked as requested.)
7 BY MR. SMITH:
8 Q. Sir, I'm going to show you what's been
9 previously marked as Exhibit Finn 4. Can you take some
10 time and look this over?
11 A. Sure.
12 Q. Do you recognize Exhibit No. 4?
13 A. Yes.
14 Q. And what is it?
15 A. It's a couple pages of Yellow Pages in which
16 lists phone numbers.
17 Q. So the first two pages, it looks like it's
18 from a Yellow Pages book, June 2007; is that right?
19 A. Yes.
20 Q. For the area codes 847 and 224?
21 A. Yes.
22 Q. Did you review these documents in preparation
23 for today's deposition?
24 A. Yes.

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1 Q. Do you know where these documents came from?
2 A. Yes. Our attorneys found these pages, got
3 these pages.
4 Q. And were they obtained after this lawsuit was
5 filed?
6 A. I believe so, yes.
7 Q. So this isn't something that is an indication
8 that Grainger obtained Mr. Davies' fax number before
9 sending out the fax advertisement, right?
10 A. Correct.
11 Q. Through the Yellow Pages?
12 MR. BECK: Object to the form.
13 You can answer.
14 BY THE WITNESS:
15 A. That's correct.
16 MR. SMITH: Mark this next one.
17 (Finn Deposition Exhibit No. 5
18 marked as requested.)
19 BY MR. SMITH:
20 Q. Sir, I'm going to hand to you what's been
21 previously marked as Exhibit Finn 5. Can you take a
22 look at this?
23 A. Okay.
24 Q. Do you recognize Exhibit No. 5?

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1 A. I don't recognize -- I don't recognize this
2 one in particular.
3 Q. Okay. I want to call your attention to
4 Page No. 12. Do you recognize these -- what's called
5 here Affirmative and Other Defenses?
6 A. I'm sorry. Ask the question again. Do I
7 recognize --
8 Q. Well, do you recognize the entire Finn No. 5,
9 which was titled "Answer and Affirmative Defense."
10 It's a 15-page document.
11 A. I'm sorry. So I'm getting confused. Could
12 you just state the question one other time?
13 Q. Sure. Finn No. 5 is a document that was
14 filed by Grainger.
15 A. Okay.
16 Q. It's called an Answer and Affirmative
17 Defense. What I would like to know is if you recognize
18 it.
19 A. I don't remember seeing this.
20 Q. Okay. And then I called your attention to
21 page 12.
22 A. Okay.
23 Q. And do you recall seeing these affirmative
24 and other defenses?

<p style="text-align: right;">73</p> <p>1 A. I don't remember seeing this.</p> <p>2 Q. Okay. And it could be you haven't seen it.</p> <p>3 A. Right.</p> <p>4 Q. So I want to call your attention to the first</p> <p>5 defense here on page 12. It states, "Plaintiff's claim</p> <p>6 is barred to the extent that plaintiff consented to</p> <p>7 receiving fax transmissions from Grainger." Do you see</p> <p>8 that there?</p> <p>9 A. Yes.</p> <p>10 Q. So I understand that it's Grainger's position</p> <p>11 that plaintiff consented to receiving the fax</p> <p>12 advertisement. That is Grainger's position?</p> <p>13 A. That is correct.</p> <p>14 Q. Can you explain to me what that decision is</p> <p>15 based on?</p> <p>16 A. Yes. Mr. Davies is an existing customer, and</p> <p>17 he had his phone number and fax in a --</p> <p>18 publicly-available source, so that gives consent.</p> <p>19 Q. Any other reason?</p> <p>20 A. No.</p> <p>21 Q. From the other small business customers that</p> <p>22 Grainger targeted with these fax advertisements, does</p> <p>23 Mr. Davies -- is he in any unique position than the</p> <p>24 other recipients?</p>	<p style="text-align: right;">75</p> <p>1 are there any other differences between the --</p> <p>2 Mr. Davies and the other recipients?</p> <p>3 MR. BECK: Object to the form.</p> <p>4 You can answer.</p> <p>5 BY THE WITNESS:</p> <p>6 A. There are a lot of different small</p> <p>7 businesses. There are contractors. There are small --</p> <p>8 other little businesses that would make Mr. Davies</p> <p>9 different, but -- That would be one thing, but ...</p> <p>10 Q. And again, I think I asked a bad question</p> <p>11 because I didn't clarify that that was limited to the</p> <p>12 issue of consent.</p> <p>13 A. Okay. Everyone gave consent to receiving</p> <p>14 these faxes.</p> <p>15 Q. By being existing customers and provide --</p> <p>16 either providing Grainger with a fax number or being</p> <p>17 listed in a public source?</p> <p>18 A. Yes.</p> <p>19 Q. Is there any other way that -- either</p> <p>20 plaintiff or any of the other recipients gave consent</p> <p>21 to Grainger?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Now, you indicated that, in your mind,</p> <p>24 there's a difference between -- a potential difference,</p>
<p style="text-align: right;">74</p> <p>1 MR. BECK: Object to the form.</p> <p>2 You can answer.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Could you explain "different"?</p> <p>5 Q. It was a bad question.</p> <p>6 Limited to Grainger's position that plaintiff</p> <p>7 consented to receive the fax advertisement because he's</p> <p>8 an existing customer and you obtained his fax number</p> <p>9 from a public source, does that put Mr. Davies in a</p> <p>10 unique position than any of the other small business</p> <p>11 customers that received one of Grainger's fax</p> <p>12 advertisements?</p> <p>13 A. We had existing customers that gave us the</p> <p>14 fax themselves. We had other customers that were</p> <p>15 existing customers in which we received the fax from</p> <p>16 InfoUSA.</p> <p>17 Q. Okay.</p> <p>18 A. So I guess -- And so one case, I guess, that</p> <p>19 does make him a little unique. But this fax campaign</p> <p>20 was about existing small business customers who had</p> <p>21 been doing business with us previously.</p> <p>22 Q. Okay. Other than the difference of some of</p> <p>23 the existing customers gave Grainger a fax number and</p> <p>24 Mr. Davies never actually gave Grainger a fax number,</p>	<p style="text-align: right;">76</p> <p>1 anyway, of an existing customer giving the fax number</p> <p>2 to Grainger, or Mr. Davies' position in which he never</p> <p>3 did that; instead, InfoUSA found it from a public</p> <p>4 source? Is that right?</p> <p>5 MR. BECK: Object to the form.</p> <p>6 You can answer.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Say that again.</p> <p>9 Q. Sure. You had indicated there's, in your</p> <p>10 mind, a difference between Mr. Davies, who never</p> <p>11 actually gave Grainger his fax number, and other</p> <p>12 existing customers who did -- Is that right? -- with</p> <p>13 respect to the issue of consent?</p> <p>14 A. With respect to how we received the fax</p> <p>15 number, yes.</p> <p>16 Q. Well, with respect to the issue of consent.</p> <p>17 A. Okay.</p> <p>18 MR. BECK: I'm sorry. Object to the form.</p> <p>19 Is there a question?</p> <p>20 MR. SMITH: Yeah. Let me rephrase it again.</p> <p>21 BY MR. SMITH:</p> <p>22 Q. So this is limited to the issue of consent.</p> <p>23 You had earlier testified, I think -- and correct me if</p> <p>24 I'm wrong --</p>

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1 A. Okay.

2 Q. -- that the only difference with the issue of

3 consent between a person like Mr. Davies and other

4 recipients is that Grainger received the fax numbers

5 directly from some of these other recipients, but not

6 Mr. Davies; is that correct?

7 MR. BECK: I'll object to the form. I think that

8 misstates the testimony -- That is his testimony, but

9 that wasn't the question that was asked because I think

10 you weren't asking about consent in particular.

11 But you can answer that.

12 BY THE WITNESS:

13 A. I'll try to answer this as best I can.

14 Everybody consented to getting the fax. So there were

15 no differences --

16 Q. Okay.

17 A. -- as it relates to consent.

18 Q. So it doesn't matter whether Grainger

19 obtained the fax number from InfoUSA or directly from

20 the customer; they all consented in the same way?

21 A. Correct.

22 Q. Now, is there a way -- And you don't have to,

23 you know, give me exact numbers here at this

24 deposition. But is there a way to determine the -- for

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1 all of the fax advertisements that were sent from

2 December 2008 to the end of 2009, whether those

3 recipients gave Grainger their fax number directly or

4 whether InfoUSA pulled their fax numbers from a

5 publicly-available source?

6 A. Yes.

7 Q. And can you -- How would that -- How would

8 that process be -- or go?

9 MR. BECK: Object as beyond the scope.

10 You can answer.

11 BY THE WITNESS:

12 A. We know the customers that we didn't have a

13 fax number in our -- in SAP.

14 Q. And do you know the percentage of people that

15 you had fax numbers versus people -- or existing

16 customers in which you did not without the help of

17 InfoUSA?

18 MR. BECK: I'll object to the form.

19 You can answer.

20 BY THE WITNESS:

21 A. I just want to -- I'm just trying to -- I

22 just didn't understand the question exactly.

23 Q. Do you know that -- There's the -- the group

24 like Mr. Davies, with the help of InfoUSA, you obtained

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1 their fax number; then there's a group of existing

2 customers that you didn't need InfoUSA's help?

3 A. Correct.

4 Q. Do you know the percentage of those two

5 categories?

6 A. Yeah. I don't have it. I don't know it off

7 the top of my head, but yes.

8 Q. You can figure it out?

9 A. Yes, yes.

10 Q. And this is just to beat a dead horse, I

11 think. But the second affirmative defense here on

12 page 12 of Exhibit No. 5 goes towards Grainger's

13 contention that plaintiff had an established business

14 relationship with Grainger. It's Grainger's position

15 that all of the people that -- all the small businesses

16 that received these subject faxes were existing

17 customers of Grainger; is that right?

18 A. That's correct.

19 MR. SMITH: Let me check my notes, but I think

20 that's all I have.

21 MR. BECK: Okay. Go off the record for a minute?

22 MR. SMITH: Sure.

23 (Discussion off the record.)

24 BY MR. SMITH:

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1 Q. Regarding the analytics team, are you able to

2 identify folks who worked on the analytics team from

3 the period of 2008 through 2009?

4 A. Yeah.

5 Q. And who are they?

6 A. I mentioned some of the names earlier. Laura

7 Weiss.

8 Q. Okay.

9 A. Tom Carlson. I believe those were the major

10 two that worked on the analytics team at the time.

11 MR. SMITH: Okay. That's all I have.

12 MR. BECK: Thank you. We'll reserve signature.

13 (Witness excused.)

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<p style="text-align: right;">81</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION</p> <p>4 DAVID DAVIES d/b/a DAVIES HOME) 5 SERVICES, individually and as) 6 the representative of a class of) 7 similarly situated persons,) 8 Plaintiff,) No. 13-CV-3546 9) 10 vs.) 11) 12 W.W. GRAINGER, INC., and JOHN) 13 DOES 1-12,) 14 Defendants.)</p> <p>15 I, ROBERT J. FINN, state that I have read the 16 foregoing transcript of the testimony given by me at my 17 deposition on the 15th day of October, A.D., 2013, and 18 that said transcript constitutes a true and correct 19 record of the testimony given by me at the said 20 deposition except as I have so indicated on the errata 21 sheets provided herein.</p> <p>22 _____ 23 ROBERT J. FINN</p> <p>24 SUBSCRIBED AND SWORN to 25 before me this _____ day 26 of _____, 2013.</p> <p>27 _____ 28 NOTARY PUBLIC</p>	<p style="text-align: right;">83</p> <p>1 The signature of the witness, ROBERT J. FINN, 2 was reserved by agreement of counsel.</p> <p>3 The undersigned is not interested in the 4 within case, nor of kin or counsel to any of the 5 parties.</p> <p>6 Witness my signature as a Certified Shorthand 7 Reporter in the State of Illinois on October 18, 2013.</p> <p>8 9 10</p> <p>11 _____ 12 TERESA RESENDEZ, CSR 13 CSR No. 084-003718</p> <p>14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">82</p> <p>1 UNITED STATES OF AMERICA) 2 NORTHERN DISTRICT OF ILLINOIS) 3 EASTERN DIVISION) SS. 4 STATE OF ILLINOIS) 5 COUNTY OF COOK)</p> <p>6 7 I, Teresa Resendez, Certified Shorthand 8 Reporter, do hereby certify that on October 15, 2013, 9 the deposition of the witness, ROBERT J. FINN, called 10 by the Plaintiff, was taken before me, reported 11 stenographically, and was thereafter reduced to 12 typewriting under my direction.</p> <p>13 The said deposition was taken at the offices 14 of Bock & Hatch, LLC, 134 North LaSalle Street, Suite 15 1000, Chicago, Illinois; and there were present counsel 16 as previously set forth.</p> <p>17 The said witness, ROBERT J. FINN, was first 18 duly sworn to tell the truth, the whole truth, and 19 nothing but the truth, and was then examined upon oral 20 interrogatories.</p> <p>21 I further certify that the foregoing is a 22 true, accurate, and complete record of the questions 23 asked of and answers made by the said witness, ROBERT 24 J. FINN, at the time and place hereinabove referred to.</p> <p>25 26 27 28</p>	

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID DAVIES d/b/a DAVIES HOME)	
SERVICES, individually and as the)	
representative of a class of similarly situated)	Case No. 13-cv-3546
persons,)	
)	
Plaintiff,)	Judge Sharon Johnson Coleman
)	
v.)	Mag. Judge Michael T. Mason
)	
W.W. GRAINGER, INC, and JOHN DOES 1-12,)	
)	
Defendants.)	

RULE 30 (B) (6) NOTICE OF DEPOSITION

TO: Kimball R. Anderson
Norman K. Beck
David Luger
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601

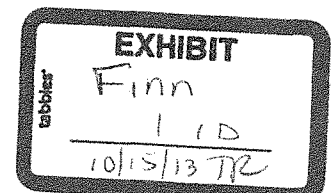
PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, on August 28, 2013 beginning at 10:00 A.M. local time and continuing until completed at 134 N. La Salle Street, Suite 1000, Chicago, Illinois 60602, Plaintiff through counsel will take the deposition of the designated witness(es) of W.W. Grainger, Inc. ("Grainger") via stenographic means.

The designated representative(s) of Grainger should be prepared to testify about the topics referenced in the attached "Deposition Rider."

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, if not previously produced, please produce before or at the deposition all documents relied on by the designated representative(s) in preparing for this deposition. This production should include hard copy printouts of any computer screens viewed by the designated representative.


One of Plaintiff's Attorneys

Phillip A. Bock
Richard J. Doherty
James M. Smith
Bock & Hatch, LLC
134 N. La Salle Street, Suite 1000
Chicago, IL 60602



DEPOSITION RIDER

The designated representative(s) of W.W. Grainger, Inc. ("Grainger") should be prepared to testify about the following topics:

1. Circumstances surrounding how Grainger obtained David Davies d/b/a Davies Home Services ("Plaintiff")'s facsimile number on or before December 2, 2009.
2. Circumstances surrounding how Grainger developed a list of recipients who were to receive the "Advertising circulars" as referenced by Grainger in its Initial Disclosures pursuant to Rule 26(a)(1) via facsimile from April 5, 2009 to the current date.
3. Circumstances surrounding how Grainger sent, or attempted to send, the fax attached to Plaintiff's Complaint to Plaintiff and any other recipients.
4. Circumstances surrounding how Grainger sent, or attempted to send, any "Advertising circulars" as referenced by Grainger in its Initial Disclosures to any person or entity from April 5, 2009 to the current date.
5. Circumstances surrounding Grainger's First and Third Affirmative Defenses regarding Plaintiff's consent to receive facsimile transmissions from Grainger as well as the consent from others who received Grainger's facsimile transmissions of "Advertising circulars" from April 5, 2009 to the current date.
6. Circumstances surrounding Grainger's Second and Fourth Affirmative Defenses regarding Grainger's established business relationship with Plaintiff and others who received Grainger's facsimile transmissions of "Advertising circulars" from April 5, 2009 to the current date.
7. The "facsimile advertising campaign" as referenced in Grainger's Initial Disclosures pursuant to Rule 26(a)(1).

8. Circumstances surrounding the “selection of certain recipients of fax advertisement” from InfoGroup, Inc. as referenced in Grainger’s Initial Disclosures pursuant to Rule 26(a)(1).

CERTIFICATE OF SERVICE

The undersigned attorney states that on August 5, 2013, he served a true and correct copy of *Rule 30(B)(6) Notice of Deposition* on the party listed below by depositing the same in the U.S. mail at 134 N. La Salle St., IL 60602 at or before 5:00 p.m., with proper postage prepaid to the following address:

Kimball R. Anderson
Norman K. Beck
David Luger
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601

Attorneys for W W Grainger, Inc.



One of Plaintiff's Attorneys

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DAVID DAVIES d/b/a DAVIES HOME)	
SERVICES, individually and as the)	
representative of a class of similarly-situated)	
persons,)	
)	
Plaintiff,)	No. 13-CH-9308
)	
v.)	Judge Leroy K. Martin
)	
W.W. GRAINGER, INC., and JOHN DOES)	
1-12,)	
)	
Defendants.)	

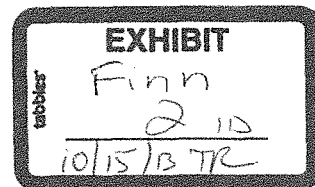
AMENDED CLASS ACTION COMPLAINT

Plaintiff, DAVID DAVIES d/b/a DAVIES HOME SERVICES ("Plaintiff"), brings this action on behalf of himself and all other persons similarly situated, through his attorneys, and except as to those allegations pertaining to Plaintiff or his attorneys, which allegations are based upon personal knowledge, alleges the following upon information and belief against Defendants, W.W. GRAINGER, INC. ("Grainger") and JOHN DOES 1-12 collectively ("Defendants"):

PRELIMINARY STATEMENT

1. This case challenges Grainger's practice of faxing unsolicited advertisements.

2. The federal Telephone Consumer Protection Act, 47 USC § 227 (the "TCPA"), prohibits a person or entity from faxing or having an agent fax advertisements without the recipient's prior express invitation or permission ("junk faxes" or "unsolicited faxes"). Moreover, the TCPA mandates that if a person or



entity sends a fax advertisement it must always include a very specific opt-out notice that is clearly and conspicuously included on the first page of the advertisement. *See* 47 U.S.C. § 227 (b) (2) (D); and 47 C.F.R. § 64.1200 (a) (4) (iii). The TCPA provides a private right of action and provides statutory damages of \$500 - \$1,500 per violation.

3. Unsolicited faxes damage their recipients. A junk fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient's valuable time that would have been spent on something else. A junk fax interrupts the recipient's privacy. Unsolicited faxes prevent fax machines from receiving authorized faxes, prevent their use for authorized outgoing faxes, cause undue wear and tear on the recipients' fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message.

4. On behalf of himself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendants under the TCPA and the common law of conversion.

5. Plaintiff seeks an award of statutory damages for each violation of the TCPA.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff is a resident of, and conducts business in, Cook County, Illinois.

7. Defendant, Grainger, has its headquarters in Lake Forest, Illinois and conducts business in Cook County, Illinois.

8. Plaintiff sued Defendants John Does 1-12 as it is not clear whether any entities or persons other than Grainger actively participated in the transmission of the subject fax advertisements, or benefitted from the transmissions of Grainger's fax advertisements.

9. Jurisdiction is conferred by 735 ILCS 5/2-209 in that Grainger has transacted business and committed tortious acts related to the matters complained of herein.

10. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, et seq. because some of the tortious acts complained of occurred in Cook County, Illinois.

FACTS

11. On or about December 2, 2009, Defendants sent, or caused to be sent, an unsolicited fax advertisement that advertised Grainger's goods, products, or services. Exhibit A, copy of the subject fax advertisement.

12. Plaintiff did not invite or give permission, to anyone, to send Exhibit A to him.

13. Exhibit A does not contain a clear and conspicuous opt-out notice. Instead, Defendants included an opt-out notice in tiny font that was inserted after Defendants' disclosure regarding the terms of the \$25 offer included on the fax advertisement. Id. Additionally, with an asterisk, Defendants call the recipients' attention to Defendants' own disclosure regarding the terms of the \$25 offer, but do not use any method to draw the recipients' attention to the opt-out notice. Id.

14. On the face of the subject fax, it is not understood whether the telephone and facsimile numbers identified in the notice were available to Plaintiff to make an opt-out request 24 hours a day, 7 days a week.

15. On information and belief, Grainger sent the same facsimile to Plaintiff and more than 39 other recipients without first receiving the recipients' express permission or invitation. This is based, in part, on the fact that the subject fax was not addressed to anyone in particular, that Plaintiff never gave permission to anyone to send the subject fax advertisement to him, and that sending advertisements by fax is an inexpensive way to reach many persons.

16. There is no reasonable means for Plaintiff (or any other putative Class member) to avoid receiving illegal faxes. Fax machines are left on and ready to receive the urgent communications their owners desire to receive.

CLASS REPRESENTATION ALLEGATIONS

17. This action has been brought, and may be properly maintained, under 735 ILCS 5/2-801. This action satisfies the class action prerequisites of numerosity, common questions of law or fact predominate over individual questions, the representative parties will fairly and adequately protect the interests of the Class, and the class action is an appropriate method for the fair and efficient adjudication of the controversy.

18. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated as members of the Class, initially defined as follows:

All persons who were sent one or more telephone facsimile messages since April 5, 2009, that advertised the

commercial availability of property, goods, or services offered by W.W. Grainger, Inc., that did not contain an opt-out notice that complied with federal law.

19. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, any officers or directors of Defendants, the legal representatives, heirs, successors, and assigns of Defendants, and any Judge assigned to this action, and his or her family.

20. Numerosity/Impracticability of Joinder: On information and belief, the Class consists of more than thirty-nine people and, thus, is so numerous that joinder of all members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiff, but can be obtained from Defendants' records or the records of third parties.

21. Questions of Law or Fact Common to the Class: There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from one Class member to another, and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to the following:

- a. Whether Defendants sent unsolicited fax advertisements;
- b. Whether Exhibit A advertised the commercial availability of property, goods or services;

- c. The manner and method Defendants used to compile or obtain the list of fax numbers to which it sent Exhibit A and other unsolicited fax advertisements;
- d. Whether Defendants faxed advertisements without first obtaining the recipients' express permission or invitation;
- e. Whether Defendants' opt out notice, violated the TCPA;
- f. Whether Defendants' opt out notice was clear and conspicuous;
- g. Whether Defendants' opt out notice contained telephone and facsimile numbers that were available to Plaintiff and the other Class members 24 hours a day, 7 days a week;
- h. Whether Plaintiff and the other Class members are entitled to statutory damages;
- i. Whether Defendants should be enjoined from faxing advertisements in the future;
- j. Whether the Court should award trebled damages; and
- k. Whether Defendants' conduct as alleged herein constituted conversion.

22. Fair and Adequate Representation: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff does not have any interests adverse to the Class. Plaintiff has retained counsel who are experienced in class action litigation to represent him in this action.

23. Appropriateness: A class action is an appropriate method for the fair and efficient resolution of this controversy.

24. Plaintiff envisions no difficulty in the management of this action as a class action.

COUNT I
TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227

25. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

26. Plaintiff brings Count I on behalf of himself and a class of similarly situated persons.

27. The TCPA prohibits the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine....” 47 U.S.C. § 227 (b) (1).

28. The TCPA defines “unsolicited advertisement,” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s express invitation or permission.” 47 U.S.C. § 227 (a) (4).

29. The TCPA provides:

3. Private right of action. A person may, if otherwise permitted by the laws or rules of court of a state, bring in an appropriate court of that state:

(A) An action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) An action to recover for actual monetary loss from such a violation, or to receive

\$500 in damages for each such violation, whichever is greater, or

(C) Both such actions.

30. The Court, in its discretion, can treble the statutory damages if the violation was knowing. 47 U.S.C. § 227.

31. In relevant part, the TCPA states that “[t]he Commission shall prescribe regulations to implement the requirements of this subsection ... In implementing the requirements of this subsection, the Commission shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if... (i) the notice is clear and conspicuous ...” 47 U.S.C. § 227 (b) (2) (D) (i).

32. Moreover, “a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if... (v) the telephone and facsimile machine numbers and the cost-free mechanism ... permit an individual or business to make such a request at any time on any day of the week.” 47 U.S.C. § 227 (b) (2) (D) (v).

33. Defendants violated the 47 U.S.C. § 227 et seq. by sending advertisements by fax (such as Exhibit A) to Plaintiff and the other Class members without first obtaining their prior express invitation or permission.

34. Defendants violated the 47 U.S.C. § 227 et seq. by not providing a clear and conspicuous opt out notice. The notice that Defendants did include is barely legible, is in tiny font, is included only after Defendants’ disclosure as to the \$25 offer contained in the advertisement, and does not contain any method (such as the

asterisk Defendants' used for their own disclosure) to direct the recipients' attention to the tiny and illegible opt-out notice. Exhibit A. Additionally, it is not clear whether Defendants provided telephone and facsimile numbers that allowed Plaintiff and the Class members to make an opt-out request at any time on any day of the week.

35. Facsimile advertising imposes burdens on unwilling recipients that are distinct from the burdens imposed by other types of advertising. The content of the required opt-out notice is designed to ensure that the recipients have the necessary contact information to opt out of future fax transmissions. If senders do not clearly and conspicuously provide the opt-out content to the recipients, then the senders fail to enable the recipients with the appropriate information to stop the burdens imposed by this form of advertisement.

36. The TCPA is a strict liability statute and Defendants are liable to Plaintiff and the other Class members even if their actions were negligent.

37. Moreover, Defendants are liable to Plaintiff and the other Class members under the TCPA for including an improper opt-out notice even if Defendants ultimately prove that they obtained prior express permission to send the advertisements by fax or prove that Defendants had an established business relationship with Plaintiff and the other Class members.

38. Defendants knew or should have known that Plaintiff and the other Class members had not given express invitation or permission for Defendants or anybody else to fax advertisements about Grainger's goods, products, or services,

that Plaintiff and the other Class members did not have an established business relationship with Defendants, that Exhibit A is an advertisement, and that Exhibit A and the other advertisements Defendants sent did not display the proper opt out notice as required by the TCPA.

39. Defendants' actions caused damages to Plaintiff and the other Class members. Receiving Defendants' junk faxes caused the recipients to lose paper and toner consumed in the printing of Defendants' faxes. Moreover, the subject faxes used Plaintiff's and the Class's fax machines. The subject faxes cost Plaintiff time, as Plaintiff and his employees wasted their time receiving, reviewing and routing Defendants' illegal faxes. That time otherwise would have been spent on Plaintiff's business activities. Defendants' faxes unlawfully interrupted Plaintiff's and the other class members' privacy interests in being left alone. Finally, the injury and property damage sustained by Plaintiff and the other Class members from the sending of Exhibit A occurred outside Defendants' premises.

40. Even if Defendants did not intend to cause damage to Plaintiff and the other Class members, did not intend to violate their privacy, and did not intend to waste the recipients' valuable time with Grainger's advertisements, those facts are irrelevant because the TCPA is a strict liability statute.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, jointly and severally as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff's counsel as counsel for the class;

B. That the Court award \$500.00-\$1,500.00 in damages for each violation of the TCPA;

C. That the Court enter an injunction prohibiting Defendants from engaging in the statutory violations at issue in this action; and

D. That the Court award costs and such further relief as the Court may deem just and proper.

COUNT II
CONVERSION

41. Plaintiff incorporates paragraphs 1 through 24 as though fully set forth herein.

42. Plaintiff brings Count II on behalf of himself and a class of similarly situated persons.

43. By sending Plaintiff and the other Class members unsolicited faxes, Defendants improperly and unlawfully converted their fax machines, toner and paper to its own use. Defendants also converted Plaintiff's employees' time to their own use.

44. Immediately prior to the sending of the unsolicited faxes, Plaintiff and the other Class members owned an unqualified and immediate right to possession of their fax machines, paper, toner, and employee time.

45. By sending the unsolicited faxes, Defendants permanently misappropriated the Class members' fax machines, toner, paper, and employee time to their own use. Such misappropriation was wrongful and without authorization.

46. Defendants knew or should have known that their misappropriation of paper, toner, and employee time was wrongful and without authorization.

47. Plaintiff and the other Class members were deprived of the use of the fax machines, paper, toner, and employee time, which could no longer be used for any other purpose. Plaintiff and each Class member thereby suffered damages as a result of their receipt of unsolicited fax advertisements from Defendants.

48. Each of Defendants' unsolicited faxes effectively stole Plaintiff's employees' time because persons employed by Plaintiff were involved in receiving, routing, and reviewing Defendants' illegal faxes. Defendants knew or should have known employees' time is valuable to Plaintiff.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, demands judgment in its favor and against Defendants, jointly and severally as follows:

A. That the Court adjudge and decree that the present case may be properly maintained as a class action, appoint Plaintiff as the representative of the class, and appoint Plaintiff counsel as counsel for the class;

B. That the Court award appropriate damages;

C. That the Court award costs of suit; and

D. Awarding such further relief as the Court may deem just and proper.

Respectfully submitted,

DAVID DAVIES d/b/a DAVIES HOME
SERVICES, individually and as the
representative of a class of similarly-
situated persons,

By:

A handwritten signature in black ink, appearing to be "P. A. Bock", written over a horizontal line.

One of his attorneys

Phillip A. Bock
James M. Smith
Phillip J. Bullimore
BOCK & HATCH, LLC
134 North La Salle Street, Suite 1000
Chicago, IL 60602
Telephone: 312/658-5500

EXHIBIT A

GRAINGER.
// // // //

Monthly Specials



\$25 off*

your next order of \$100 or more

Choose from any category, including:

- Motors & Power Trans
- Material Handling
- Safety
- Janitorial & Painting
- Hand Tools
- HVAC/R
- Pumps & Plumbing
- Lighting
- And More!

**CALL
TODAY**

**Offer only valid when calling
1-877-877-6410**

From 7 a.m. - 6 p.m. CT, M-F and mention code M-S245

* Offer valid for the intended recipient of this fax and is not transferable. Offer valid on products ordered from December 1, 2009 to December 31, 2009 and only when placing an order by phone at 1-877-877-6410. \$25 off applies to your next order of \$100 or more at the Grainger catalog each price on products advertised in the Grainger catalog or shown on Grainger.com® only, and does not apply to tax and freight, special or custom products, or Grainger TripleGuard® repair & replacement coverage. The \$100 minimum purchase requirement excludes select items from the following categories: Electrical wire and cable, conduit, building wire, copper pipe and tubing, raw materials (blanks, flats, bars, plates, sheet stock, rod stock), A/C refrigerant line sets, refrigerants, ice melt, power tools, generators, test equipment and gauges. For a list of specific exclusions, call 1-877-877-6410. Offer cannot be combined with any other promotions or price discounts. All sales are subject to Grainger's current Sales and Terms & Conditions available in Grainger's general catalog and on Grainger.com which are incorporated herein by reference.

If you do not wish to receive faxes from Grainger, please call 1-888-730-4920 extension 1732 and enter the fax number(s) to which you no longer wish to receive correspondence, or fax your request to 1-866-404-3933. Our failure to comply with your request within 30 days of receipt is unlawful.

File Edit View Go Tools Actions Help

List Edit Goto Extras Environment Settings System Help

Customer Line Item Display

Customer: 835800897 WC Branch: 146
 Company Code: 0300 Alt Payer:
 Name: DAVIES HOME SERVICES Head Office:
 Street: 1108 W CRESCENT AVE Phone: 8479253738
 City: PARK RIDGE IL US

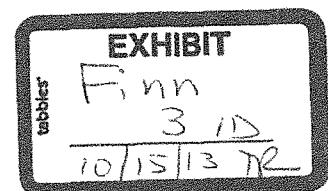
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Customer: * WC Branch: *
 Company Code: * Alt Payer: *
 Name: * Head Office: *
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 City: * * *

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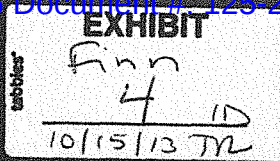
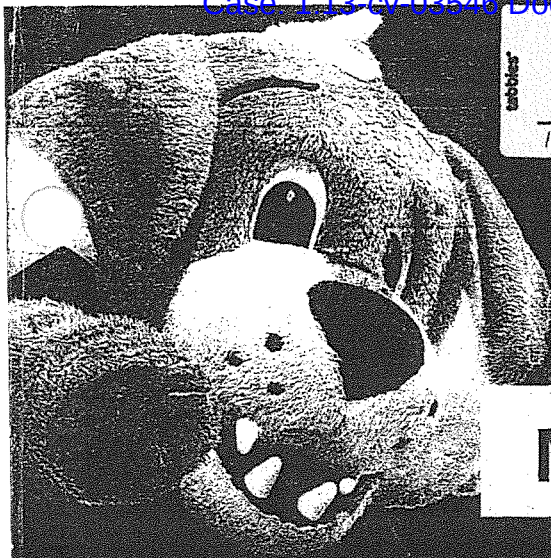
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EA	4C704	R	0000	00	600680000	60068
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PT	9N999		0000	00	600680000	60068
9A	9A999		0000	00	000000000	00000
PT	9N999		0000	00	600680000	60068
SR	5K917	F2	0000	99	600683957	60068
EA	4M218	FK	0000	00	600683957	60068
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CINV_CORD_TYP_CD	CINV_XTND_PRC_AM	CINV_XTND_CST_AM	CINV_ORORG_PLNT_CD	CINVL_ITEM_PRC_CTGRY_CD	DIVISION
03	91.9	50.9 000	WA		01
07	-2.6	0 000			01
00	2.6	1.03 000			02
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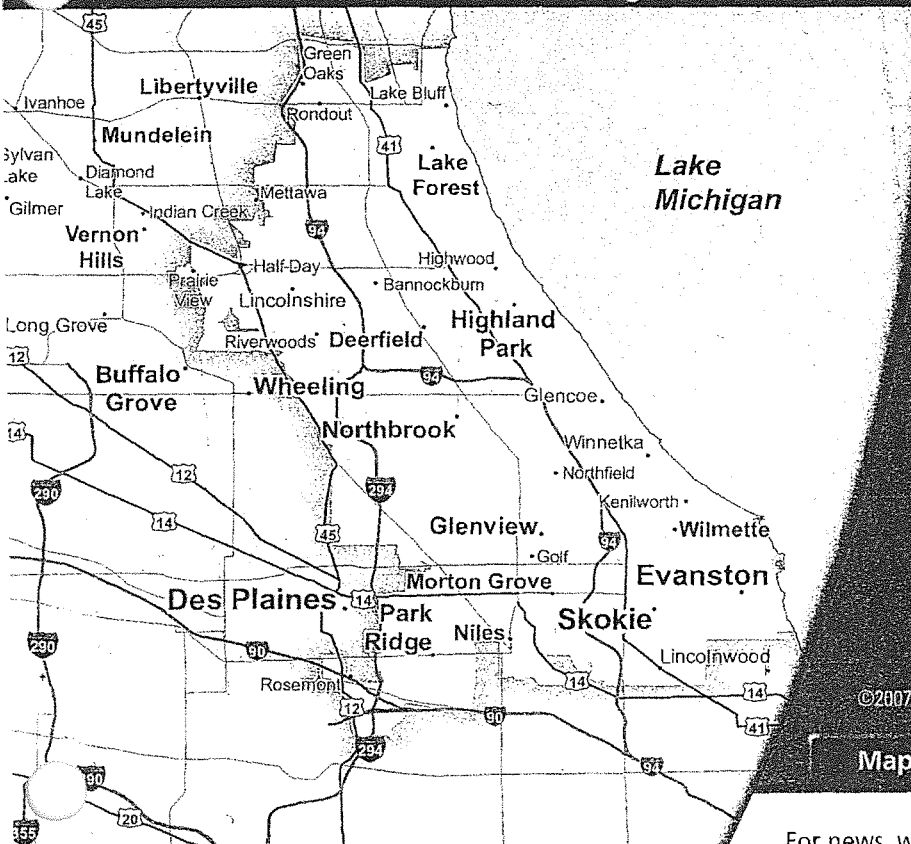
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JUNE 2007

AT&T Illinois

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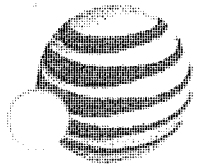
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 DalPonte Refinishing
 1300 Old Skokie Rd Highland Park 60035-579-0922
 Daisandro Rose Insurance
 6610 N Milwaukee Av Niles 60714-647-9701
 Dalton John E PhD 505 E Hawley Mundlein 60060-566-7121
 Dalton Jonathan A MD 707 Lake Cook Rd Deerfield 60015-480-0004
 Dalzell Financial Group
 1420 Renaissance Dr Park Ridge 60068-297-6650
 Dam Inn 1000 S Milwaukee Av Wheeling 60090-537-4350
 Dam Snell and Taverine Ltd
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 Dam Snell Taverine 1512 Artesian Pkwy Libertyville 60048-816-1459
 Damar Natural Stone Import Inc
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 Damato Glen 3155 Kayjay Dr Northbrook 60062-272-9414
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 Daminio Diesel Service 10 S River Rd Des Pl 60016-635-0109
 Damiano & Graham Ltd Glenview-824-1870
 Dan Deuble 13743 W Laurel Dr Lk Forest 60045-247-9064
 Dan Marc Enterprises Inc
 3469 Whirlaway Dr Northbrook 60062-498-2355
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 1401 E Oakton Des Pl 60018-699-7520
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 1890 Techny Ct Northbrook 60062-753-9393
 Dana Mills Inc 1610 Barclay Av Buffalo Grove 60089-913-9700
 Da'Nali's Brickoven Pizza & Pasta Cafe
 4032 Oakton Skokie 60076-677-2806
 Da'Nali's Brickoven Pizza & Pasta Cafe
 4032 Oakton Skokie 60076-677-2806
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 Dance Academy Of Libertyville
 1137 S Milwaukee Av Libertyville 60048-247-1327
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 Dance Elements Inc 815 Waukegan Rd Northbrook 60062-564-2729
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David Michael & Co 450 Skokie Bl Northbrook 60062-847 480-1260

David Noble and Company
900 Westcliff Ln Deerfield 60015-847 914-0806

David R Kaplan LCPC
401 S Milwaukee Av Wheeling 60090-847 537-0488

David Roth Woodworking
707 Washington Evanston 60202-847 866-9920

David S Gilford Ltd
520 Lake Cook Rd Deerfield 60015-847 317-0160

David Seiberling Ltd
637 E Gold Rd Art Hts 60005-Evanston Tel No 847 864-7870

David Shane 444 Skokie Bl Wilmet 60091-847 256-3100

David Sherman & Company
509 Skokie Bl Northbrook 60062-847 509-1414

David Simm Photography
3985 Gregory Dr Glenview 60025-847 803-9450

David Stuart Financial
899 Skokie Bl Northbrook 60062-847 564-1280

DAVID'S BISTRO
623 N Wolf Rd Des Pl 60016-847 803-3233

David's Bridal
700 N Milwaukee Av Vernon Hills 60061-847 816-7663

David's Bridal Alterations
700 N Milwaukee Av Vernon Hills 60061-847 816-8806

David's Inc 4352 W Touhy Av Lincoln 60712-847 675-4100

Davidson Commission
720 Smoke Tree Rd Deerfield 60015-847 405-9400

Davidson Harlan Inc
773 Glen Av Wheeling 60090-847 541-9720

Davidson Jonathan DDS
9215 Skokie Bl Skokie 60077-847 329-9801

Davidson Marie A PhD Glenview 60025-847 486-9106

Davies Home Services
324 Busse Hwy Park Ridge 60068-847 825-3741

Davies Home Services
824 Busse Hwy Park Ridge 60068-847 825-3738

Davies Susan A MD 4250 Dempster Skokie 60076-847 763-8860

Davin Industries Inc 1881 Commerce Dr Elk Grove 60007-Rosemont Tel No 847 296-0077

Davis Cleaners 518 Davis Evanston 60201-847 864-4915

Davis Cleaners & Shirt Launderers
4047 Dempster Skokie 60076-847 674-1918

Davis Custom Top & Trim
4901 W Jackson Bl Chgo-800 281-2929

Davis Dann Levin LLC
600 Central Av Highland Pk 60035-847 266-2217

Davis & Davis Dentistry
1430 Thacker Des Pl 60016-847 824-4919

Davis Drapery Specialists
4047 Dempster Skokie 60076-847 674-1918

Davis & Engert Dentistry
20 Main Park Ridge 60068-847 698-2161

Davis Flowers 1022 Davis Evanston 60201-847 475-8224

Davis Gary MD 1000 Central Av Evanston-847 570-1410

Davis James DDS 20 Main Park Ridge 60068-847 698-2161

DAVIS JEAN
1405 Elmwood Av Evanston 60201-847 492-1002

Davis John 170 Cambridge Rd Des Pl 60016-847 299-3892

Davis John F 912 Busse Hwy Park Ridge 60068-847 692-2701

Davis Larry atty 960 Rand Rd Des Pl 60016-847 390-8100

Davis Lloyd MD 214 McHenry Rd Buffalo Grv-847 459-1160

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID DAVIES d/b/a DAVIES HOME
SERVICES, individually and as the
representative of a class of similarly situated
persons,

Plaintiff,

v.

W.W. GRAINGER, INC. and JOHN DOES 1-
12,

Defendants.

Case No. 13 CV 3546

Hon. Sharon Johnson Coleman

Magistrate Judge Mason

ANSWER AND AFFIRMATIVE DEFENSES

Defendant W.W. Grainger, Inc. ("Grainger"), by its attorneys, for its answer and
affirmative defenses to Plaintiff's Amended Class Action Complaint, hereby answers as follows:

PRELIMINARY STATEMENT

1. This case challenges Grainger's practice of faxing unsolicited advertisements.

ANSWER: Grainger denies the allegations in Paragraph 1, except admits that this lawsuit
makes allegations against Grainger related to the practice of faxing unsolicited advertisements.

2. The federal Telephone Consumer Protection Act, 47 USC § 227 (the "TCPA"),
prohibits a person or entity from faxing or having an agent fax advertisements without the
recipient's prior express invitation or permission ("junk faxes" or "unsolicited faxes").
Moreover, the TCPA mandates that if a person or entity sends a fax advertisement it must always
include a very specific opt-out notice that is clearly and conspicuously included on the first page
of the advertisement. *See* 47 U.S.C. § 227 (b) (2) (D); and 47 C.F.R. § 64.1200 (a) (4) (iii). The
TCPA provides a private right of action and provides statutory damages of \$500 - \$1,500 per
violation.

ANSWER: The allegations in paragraph 2 contain conclusions of law, and accordingly no
response is required. To the extent a response is required, Grainger denies the allegations in
Paragraph 2.



3. Unsolicited faxes damage their recipients. A junk fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient's valuable time that would have been spent on something else. A junk fax interrupts the recipient's privacy. Unsolicited faxes prevent fax machines from receiving authorized faxes, prevent their use for authorized outgoing faxes, cause undue wear and tear on the recipients' fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message.

ANSWER: Grainger denies the allegations in Paragraph 3.

4. On behalf of himself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendants under the TCPA and the common law of conversion.

ANSWER: Grainger denies the allegations in Paragraph 4, except admits that Plaintiff purports to assert class claims against Grainger under the TCPA and the common law of conversion.

5. Plaintiff seeks an award of statutory damages for each violation of the TCPA.

ANSWER: Grainger denies the allegations in Paragraph 5, except admits that Plaintiff seeks statutory damages under the TCPA.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff is a resident of, and conducts business in, Cook County, Illinois.

ANSWER: Grainger is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the same.

7. Defendant, Grainger, has its headquarters in Lake Forest, Illinois and conducts business in Cook County, Illinois.

ANSWER: Grainger admits the allegations in Paragraph 7.

8. Plaintiff sued Defendants John Does 1-12 as it is not clear whether any entities or persons other than Grainger actively participated in the transmission of the subject fax advertisements, or benefitted from the transmissions of Grainger's fax advertisements.

ANSWER: Grainger is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the same.

9. Jurisdiction is conferred by 735 ILCS 5/2-209 in that Grainger has transacted business and committed tortious acts related to the matters complained of herein.

ANSWER: Grainger denies the allegations in Paragraph 9. Further answering, Grainger does not contest that this Court has jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331.

10. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, et seq. because some of the tortious acts complained of occurred in Cook County, Illinois.

ANSWER: Grainger denies the allegations in Paragraph 10. Further answering, Grainger does not contest that venue is appropriate in the United States District Court for the Northern District of Illinois, Eastern Division.

FACTS

11. On or about December 2, 2009, Defendants sent, or caused to be sent, an unsolicited fax advertisement that advertised Grainger's goods, products, or services. Exhibit A, copy of the subject fax advertisement.

ANSWER: Grainger denies the allegations in Paragraph 11, except admits that on or about December 2, 2009, it caused the fax transmission of an advertisement to Plaintiff.

12. Plaintiff did not invite or give permission, to anyone, to send Exhibit A to him.

ANSWER: Grainger denies the allegations in Paragraph 12.

13. Exhibit A does not contain a clear and conspicuous opt-out notice. Instead, Defendants included an opt-out notice in tiny font that was inserted after Defendants' disclosure regarding the terms of the \$25 offer included on the fax advertisement. Id. Additionally, with an asterisk, Defendants call the recipients' attention to Defendants' own disclosure regarding the terms of the \$25 offer, but do not use any method to draw the recipients' attention to the opt-out notice. Id.

ANSWER: Grainger denies the allegations in Paragraph 13.

14. On the face of the subject fax, it is not understood whether the telephone and facsimile numbers identified in the notice were available to Plaintiff to make an opt-out request 24 hours a day, 7 days a week.

ANSWER: Grainger denies the allegations in Paragraph 14.

15. On information and belief, Grainger sent the same facsimile to Plaintiff and more than 39 other recipients without first receiving the recipients' express permission or invitation. This is based, in part, on the fact that the subject fax was not addressed to anyone in particular, that Plaintiff never gave permission to anyone to send the subject fax advertisement to him, and that sending advertisements by fax is an inexpensive way to reach many persons.

ANSWER: Grainger denies the allegations in Paragraph 15, except admits that it caused the fax transmission of an advertisement to persons other than Plaintiff.

16. There is no reasonable means for Plaintiff (or any other putative Class member) to avoid receiving illegal faxes. Fax machines are left on and ready to receive the urgent communications their owners desire to receive.

ANSWER: Grainger denies the allegations of Paragraph 16 to the extent they purport to suggest that Grainger sent "illegal faxes." Grainger is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the same.

CLASS REPRESENTATION ALLEGATIONS

17. This action has been brought, and may be properly maintained, under 735 ILCS 5/2-801. This action satisfies the class action prerequisites of numerosity, common questions of law or fact predominate over individual questions, the representative parties will fairly and adequately protect the interests of the Class, and the class action is an appropriate method for the fair and efficient adjudication of the controversy.

ANSWER: The allegations in Paragraph 17 contain conclusions of law, requiring no response. To the extent an answer is required, Grainger denies the allegations in Paragraph 17.

18. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated as members of the Class, initially defined as follows:

All persons who were sent one or more telephone facsimile messages since April 5, 2009, that advertised the commercial availability of property, goods, or services offered by W.W. Grainger, Inc., that did not contain an opt-out notice that complied with federal law.

ANSWER: Grainger denies the allegations in Paragraph 18, except admits that Plaintiff purports to bring this action as a class action on behalf of the described individuals.

19. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, any officers or directors of Defendants, the legal representatives, heirs, successors, and assigns of Defendants, and any Judge assigned to this action, and his or her family.

ANSWER: Grainger denies the allegations in Paragraph 19, except admits that Plaintiff purports to exclude the described individuals from the putative class.

20. Numerosity/Impracticability of Joinder: On information and belief, the Class consists of more than thirty-nine people and, thus, is so numerous that joinder of all members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiff, but can be obtained from Defendants' records or the records of third parties.

ANSWER: The allegations in the first sentence of Paragraph 20 contain conclusions of law, requiring no response. To the extent a response is required, Grainger denies the allegations in Paragraph 20.

21. Questions of Law or Fact Common to the Class: There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from one Class member to another, and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to the following:

- a. Whether Defendants sent unsolicited fax advertisements;
- b. Whether Exhibit A advertised the commercial availability of property, goods or services;
- c. The manner and method Defendants used to compile or obtain the list of fax numbers to which it sent Exhibit A and other unsolicited fax advertisements;
- d. Whether Defendants faxed advertisements without first obtaining the recipients' express permission or invitation;
- e. Whether Defendants' opt out notice, violated the TCPA;
- f. Whether Defendants' opt out notice was clear and conspicuous;
- g. Whether Defendants' opt out notice contained telephone and facsimile numbers that were available to Plaintiff and the other Class members 24 hours a day, 7 days a week;
- h. Whether Plaintiff and the other Class members are entitled to statutory damages;
- i. Whether Defendants should be enjoined from faxing advertisements in the future;
- j. Whether the Court should award trebled damages; and
- k. Whether Defendants' conduct as alleged herein constituted conversion.

ANSWER: The allegations in Paragraph 21 contain conclusions of law, requiring no response. To the extent a response is required, Grainger denies the allegations in Paragraph 21.

22. Fair and Adequate Representation: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff does not have any interests adverse to the Class. Plaintiff has retained counsel who are experienced in class action litigation to represent him in this action.

ANSWER: The allegations in Paragraph 22 contain conclusions of law, requiring no response. To the extent a response is required, Grainger is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the same.

23. Appropriateness: A class action is an appropriate method for the fair and efficient resolution of this controversy.

ANSWER: The allegations in Paragraph 23 contain conclusions of law, requiring no response. To the extent a response is required, Grainger denies the allegations in Paragraph 23.

24. Plaintiff envisions no difficulty in the management of this action as a class action.

ANSWER: Grainger is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the same.

COUNT I
TELEPHONE CONSUMER PROTECTION ACT. 47 U.S.C. § 227

25. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

ANSWER: Grainger repeats and incorporates by reference its responses to Paragraphs 1-24.

26. Plaintiff brings Count I on behalf of himself and a class of similarly situated persons.

ANSWER: Grainger denies the allegations in Paragraph 26, except admits that Plaintiff purports to bring Count I on behalf of himself and a putative class.

27. The TCPA prohibits the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine....” 47 U.S.C. § 227 (b) (1).

ANSWER: The allegations in Paragraph 27 contain conclusions of law, requiring no response. To the extent a response is required, Grainger admits that Plaintiff selectively quotes from 47 U.S.C. § 227 and refers to that statute for a complete citation.

28. The TCPA defines “unsolicited advertisement,” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s express invitation or permission.” 47 U.S.C. § 227 (a) (4).

ANSWER: The allegations in Paragraph 28 contain conclusions of law, requiring no response. To the extent a response is required, Grainger admits that Plaintiff selectively quotes from 47 U.S.C. § 227 and refers to that statute for a complete citation.

29. The TCPA provides:

3. Private right of action. A person may, if otherwise permitted by the laws or rules of court of a state, bring in an appropriate court of that state:

(A) •An action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) An action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) Both such actions.

ANSWER: The allegations in Paragraph 29 contain conclusions of law, requiring no response. To the extent a response is required, Grainger admits that Plaintiff selectively quotes from 47 U.S.C. § 227 and refers to that statute for a complete citation.

30. The Court, in its discretion, can treble the statutory damages if the violation was knowing. 47 U.S.C. § 227.

ANSWER: The allegations in Paragraph 30 contain conclusions of law, requiring no response.

31. In relevant part, the TCPA states that “[t]he Commission shall prescribe regulations to implement the requirements of this subsection ... In implementing the requirements of this subsection, the Commission shall provide that a notice contained in an

unsolicited advertisement complies with the requirements under this subparagraph only if... (i) the notice is clear and conspicuous ..." 47 U.S.C. § 227 (b) (2) (D) (i).

ANSWER: The allegations in Paragraph 31 contain conclusions of law, requiring no response. To the extent a response is required, Grainger admits that Plaintiff selectively quotes from 47 U.S.C. § 227 and refers to that statute for a complete citation.

32. Moreover, "a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if... (v) the telephone and facsimile machine numbers and the cost-free mechanism ... permit an individual or business to make such a request at any time on any day of the week." 47 U.S.C. § 227 (b) (2) (D) (v).

ANSWER: The allegations in Paragraph 32 contain conclusions of law, requiring no response. To the extent a response is required, Grainger admits that Plaintiff selectively quotes from 47 U.S.C. § 227 and refers to that statute for a complete citation.

33. Defendants violated the 47 U.S.C. § 227 et seq. by sending advertisements by fax (such as Exhibit A) to Plaintiff and the other Class members without first obtaining their prior express invitation or permission.

ANSWER: Grainger denies the allegations in Paragraph 33.

34. Defendants violated the 47 U.S.C. § 227 et seq. by not providing a clear and conspicuous opt out notice. The notice that Defendants did include is barely legible, is in tiny font, is included only after Defendants' disclosure as to the \$25 offer contained in the advertisement, and does not contain any method (such as the asterisk Defendants' used for their own disclosure) to direct the recipients' attention to the tiny and illegible opt-out notice. Exhibit A. Additionally, it is not clear whether Defendants provided telephone and facsimile numbers that allowed Plaintiff and the Class members to make an opt-out request at any time on any day of the week.

ANSWER: Grainger denies the allegations in Paragraph 34.

35. Facsimile advertising imposes burdens on unwilling recipients that are distinct from the burdens imposed by other types of advertising. The content of the required opt-out notice is designed to ensure that the recipients have the necessary contact information to opt-out of future fax transmissions. If senders do not clearly and conspicuously provide the opt-out content to the recipients, then the senders fail to enable the recipients with the appropriate information to stop the burdens imposed by this form of advertisement.

ANSWER: Grainger denies the allegations of Paragraph 35 to the extent they purport to suggest that Grainger violated the TCPA. Grainger is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the same.

36. The TCPA is a strict liability statute and Defendants are liable to Plaintiff and the other Class members even if their actions were negligent.

ANSWER: The allegations in Paragraph 36 contain conclusions of law, requiring no response. To the extent a response is required, Grainger denies the allegations in Paragraph 36.

37. Moreover, Defendants are liable to Plaintiff and the other Class members under the TCPA for including an improper opt-out notice even if Defendants ultimately prove that they obtained prior express permission to send the advertisements by fax or prove that Defendants had an established business relationship with Plaintiff and the other Class members.

ANSWER: The allegations in Paragraph 37 contain conclusions of law, requiring no response. To the extent a response is required, Grainger denies the allegations in Paragraph 37.

38. Defendants knew or should have known that Plaintiff and the other Class members had not given express invitation or permission for Defendants or anybody else to fax advertisements about Grainger's goods, products, or services, that Plaintiff and the other Class members did not have an established business relationship with Defendants, that Exhibit A is an advertisement, and that Exhibit A and the other advertisements Defendants sent did not display the proper opt out notice as required by the TCPA.

ANSWER: Grainger denies the allegations in Paragraph 38.

39. Defendants' actions caused damages to Plaintiff and the other Class members. Receiving Defendants' junk faxes caused the recipients to lose paper and toner consumed in the printing of Defendants' faxes. Moreover, the subject faxes used Plaintiff's and the Class's fax machines. The subject faxes cost Plaintiff time, as Plaintiff and his employees wasted their time receiving, reviewing and routing Defendants' illegal faxes. That time otherwise would have been spent on Plaintiff's business activities. Defendants' faxes unlawfully interrupted Plaintiff's and the other class members' privacy interests in being left alone. Finally, the injury and property damage sustained by Plaintiff and the other Class members from the sending of Exhibit A occurred outside Defendants' premises.

ANSWER: Grainger denies the allegations in Paragraph 39.

40. Even if Defendants did not intend to cause damage to Plaintiff and the other Class members, did not intend to violate their privacy, and did not intend to waste the recipients' valuable time with Grainger's advertisements, those facts are irrelevant because the TCPA is a strict liability statute.

ANSWER: The allegations in Paragraph 40 contain conclusions of law, requiring no response. To the extent a response is required, Grainger denies the allegations in Paragraph 40.

The "Wherefore" Paragraph following Paragraph 40 of the Amended Complaint states Plaintiff's request for relief, to which no response is required. To the extent a response is required, Grainger denies the allegations set forth in the "Wherefore" paragraph following paragraph 40 and the lettered paragraphs that follow, and denies that Plaintiff is entitled to any of the relief requested therein, or any relief whatsoever.

COUNT II
CONVERSION

41. Plaintiff incorporates paragraphs 1 through 24 as though fully set forth herein.

ANSWER: Grainger repeats and incorporates by reference its responses to Paragraphs 1-24.

42. Plaintiff brings Count II on behalf of himself and a class of similarly situated persons.

ANSWER: Grainger denies the allegations in Paragraph 42, except admits that Plaintiff purports to bring Count II on behalf of himself and a putative class.

43. By sending Plaintiff and the other Class members unsolicited faxes, Defendants improperly and unlawfully converted their fax machines, toner and paper to its own use. Defendants also converted Plaintiff's employees' time to their own use.

ANSWER: Grainger denies the allegations in Paragraph 43.

44. Immediately prior to the sending of the unsolicited faxes, Plaintiff and the other Class members owned an unqualified and immediate right to possession of their fax machines, paper, toner, and employee time.

ANSWER: Grainger denies the allegations of Paragraph 44 to the extent they purport to suggest that Grainger sent unsolicited faxes. Grainger is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in this Paragraph, and therefore denies the same.

45. By sending the unsolicited faxes, Defendants permanently misappropriated the Class members' fax machines, toner, paper, and employee time to their own use. Such misappropriation was wrongful and without authorization.

ANSWER: Grainger denies the allegations in Paragraph 45.

46. Defendants knew or should have known that their misappropriation of paper, toner, and employee time was wrongful and without authorization.

ANSWER: Grainger denies the allegations in Paragraph 46.

47. Plaintiff and the other Class members were deprived of the use of the fax machines, paper, toner, and employee time, which could no longer be used for any other purpose. Plaintiff and each Class member thereby suffered damages as a result of their receipt of unsolicited fax advertisements from Defendants.

ANSWER: Grainger denies the allegations in Paragraph 47.

48. Each of Defendants' unsolicited faxes effectively stole Plaintiff's employees' time because persons employed by Plaintiff were involved in receiving, routing, and reviewing Defendants' illegal faxes. Defendants knew or should have known employees' time is valuable to Plaintiff.

ANSWER: Grainger denies the allegations in Paragraph 48.

The "Wherefore" Paragraph following Paragraph 48 of the Amended Complaint states Plaintiff's request for relief, to which no response is required. To the extent a response is required, Grainger denies the allegations set forth in the "Wherefore" paragraph following paragraph 48 and the lettered paragraphs that follow, and denies that Plaintiff is entitled to any of the relief requested therein, or any relief whatsoever.

GENERAL DENIAL

Except as otherwise expressly recognized above, Grainger denies each and every allegation contained in paragraph 1 through 48, including, without limitation, the headings and

subheadings contained in the Amended Class Action Complaint, and specifically denies any liability to Plaintiff or any members of the class that Plaintiff purports to represent. Pursuant to Rule 8(d) of the Federal Rules of Civil Procedure, averments in the Amended Class Action Complaint to which no responsive pleading is required shall be deemed denied. Grainger expressly reserves the right to amend and/or supplement its Answer.

AFFIRMATIVE AND OTHER DEFENSES

The statement of any defense hereinafter does not assume the burden of proof for any issue as to which applicable law places the burden upon Plaintiff. Grainger expressly reserves the right to amend and/or supplement their defenses.

First Defense

Plaintiff's claim is barred to the extent that Plaintiff consented to receiving facsimile transmissions from Grainger.

Second Defense

Plaintiff's claim is barred to the extent that Plaintiff had an established business relationship with Grainger.

Third Defense

Plaintiff's class claims are barred to the extent that recipients consented to receiving facsimile transmissions from Grainger.

Fourth Defense

Plaintiff's class claims are barred to the extent that recipients had established business relationships with Grainger.

Fifth Defense

Plaintiff's recovery is barred, in whole or part, by the failure of Plaintiff to mitigate damages.

Sixth Defense

Plaintiff's claims are barred because the Telephone Consumer Protection Act of 1991, codified at 47 U.S.C. § 227, is unconstitutionally vague and impinges upon freedom of speech rights granted by the First Amendment of the United States Constitution.

Seventh Defense

Plaintiff's class claims for statutory damages are barred as unconstitutional to the extent they would impose excessive fines in violation of the Eighth Amendment to the United States Constitution.

Eighth Defense

Grainger reserves the right to raise any additional defenses, cross-claims, and third-party claims, not asserted herein of which it may become aware through discovery or other investigation.

WHEREFORE, Grainger respectfully requests that this Court dismiss Plaintiff's suit with prejudice, enter judgment in Grainger's favor and against Plaintiff, award to Grainger all attorneys' fees and costs incurred in defense of this action, and award to Grainger such other and further relief to which they are entitled.

Grainger Demands Trial by Jury.

Dated: June 3, 2013

Respectfully submitted,

W.W. GRAINGER, INC.

By: /s/Norman K. Beck

Kimball R. Anderson #49980

Norman K. Beck #6275116

David Luger #6299381

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Attorneys for W.W. Grainger, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2013, copies of the foregoing document were served electronically on all counsel of record, by operation of the Court's CM/ECF system.

/s/David Luger